MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TO

THE TWO HOUSES OF CONGRESS,

AT

THE COMMENCEMENT OF THE FIRST SESSION

OF

THE TWENTY-NINTH CONGRESS.

DECEMBER 2, 1845.

Read, ordered to lie on the table, and to be printed, with the accompanying documents; and that 3,500 additional copies of the message, and 1,500 additional copies of the message and documents, be furnished for the use of the Senate.

DECEMBER 3, 1845.

Resolved, That, in addition to the copies of the President's message and documents hitherto ordered to be printed for the use of the Senate, there be printed, for the use of the Senate, 25,000 copies of the message, together with so much of the accompanying documents as relates to the negotiations between the United States and Great Britain, on the subject of the Oregon Territory.

WASHINGTON:
PRINTED BY RITCHIE & HEISS.

1845.

MESSAGE.

Fellow-citizens of the Senate and House of Representatives:

It is to me a source of unaffected satisfaction to meet the Representatives of the States and the people in Congress assembled, as it will be to receive the aid of their combined wisdom in the administration of public affairs. In performing, for the first time, the duty imposed on me by the constitution, of giving to you information of the state of the Union, and recommending to your consideration such measures as in my judgment are necessary and expedient, I am happy that I can congratulate you on the continued prosperity of our country. Under the blessings of Divine Providence and the benign influence of our free institutions, it stands before the world a spectacle of national happiness.

With our unexampled advancement in all the elements of national greatness, the affection of the people is confirmed for the union of the States, and for the doctrines of popular liberty, which lie at the foundation of our government.

It becomes us, in humility, to make our devout acknowledgments to the Supreme Ruler of the Universe, for the inestimable civil and religious blessings with which we are favored.

In calling the attention of Congress to our relations with foreign Powers, I am gratified to be able to state, that, though with some of them there have existed since your last session serious causes of irritation and misunderstanding, yet no actual hostilities have taken place. Adopting the maxim in the conduct of our foreign affairs, to "ask nothing that is not right, and submit to nothing that is wrong," it has been my anxious desire to preserve peace with all nations; but, at the same time, to be prepared to resist aggression and maintain all our just rights.

In pursuance of the joint resolution of Congress, "for annexing Texas to the United States," my predecessor, on the third day of March, 1845, elected to submit the first and second sections of that resolution to the republic of Texas, as an overture, on the part of the United States, for her admission as a State into our Union. This election I approved, and accordingly the chargé d'affaires of the United States in Texas, under instructions of the tenth of March, 1845, presented these sections of the resolution for the acceptance of that republic. The executive government, the Congress, and the people of Texas in convention, have successively complied with all the terms and conditions of the joint resolution. A constitution for the government of the State of Texas, formed by a convention of deputies, is herewith laid before Congress. It is well known, also, that the people of Texas at the polls have accepted the terms of annexation, and ratified the constitution.

I communicate to Congress the correspondence between the Secretary of State and our chargé d'affaires in Texas; and also the correspondence

of the latter with the authorities of Texas; together with the official documents transmitted by him to his own government.

The terms of annexation which were offered by the United States having been accepted by Texas, the public faith of both parties is solemnly pledged to the compact of their union. Nothing remains to consummate the event, but the passage of an act by Congress to admit the State of Texas into the Union upon an equal footing with the original States. Strong reasons exist why this should be done at an early period of the session. It will be observed that, by the constitution of Texas, the existing government is only continued temporarily till Congress can act; and that the third Monday of the present month is the day appointed for holding the first general election. On that day a governor, a lieutenant-governor, and both branches of the legislature, will be chosen by the people. The President of Texas is required, immediately after the receipt of official information that the new State has been admitted into our Union by Congress, to convene the legislature; and, upon its meeting, the existing government will be superseded, and the State government organized. Questions deeply interesting to Texas, in common with the other States; the extension of our revenue laws and judicial system over her people and territory, as well as measures of a local character, will claim the early attention of Congress; and, therefore, upon every principle of republican government, she ought to be represented in that body without unnecessary delay. I cannot too earnestly recommend prompt action on this important subject.

As soon as the act to admit Texas as a State shall be passed, the union of the two republics will be consummated by their own voluntary consent.

This accession to our territory has been a bloodless achievement. No arm of force has been raised to produce the result. The sword has had no part in the victory. We have not sought to extend our territorial possessions by conquest, or our republican institutions over a reluctant people. It was the deliberate homage of each people to the great principle of our federative union.

If we consider the extent of territory involved in the annexation—its prospective influence on America—the means by which it has been accomplished, springing purely from the choice of the people themselves to share the blessings of our union,—the history of the world may be challenged to furnish a parallel.

The jurisdiction of the United States, which at the formation of the federal constitution was bounded by the St. Mary's on the Atlantic, has passed the Capes of Florida, and been peacefully extended to the Del Norte. In contemplating the grandeur of this event, it is not to be forgotten that the result was achieved in despite of the diplomatic interference of European monarchies. Even France—the country which had been our ancient ally—the country which has a common interest with us in maintaining the freedom of the seas—the country which, by the cession of Louisiana, first opened to us access to the Gulf of Mexico—the country with which we have been every year drawing more and more closely the bonds of successful commerce—most unexpectedly, and to our unfeigned regret, took part in an effort to prevent annexation, and to impose on Texas, as a condition of the recognition of her independence by Mexico, that she would never join herself to the United States. We

may rejoice that the tranquil and pervading influence of the American principle of self-government was sufficient to defeat the purposes of British and French interference, and that the almost unanimous voice of the people of Texas has given to that interference a peaceful and effective rebuke. From this example, European governments may learn how vain diplomatic arts and intrigues must ever prove upon this continent, against that system of self-government which seems natural to our soil, and which will ever resist foreign interference.

Towards Texas, I do not doubt that a liberal and generous spirit will actuate Congress in all that concerns her interests and prosperity, and that she will never have cause to regret that she has united her "lone star" to our glorious constellation.

I regret to inform you that our relations with Mexico, since your last session, have not been of the amicable character which it is our desire to cultivate with all foreign nations. On the sixth day of March last, the Mexican Envoy Extraordinary and Minister Plenipotentiary to the United States made a formal protest, in the name of his government, against the joint resolution passed by Congress, "for the annexation of Texas to the United States," which he chose to regard as a violation of the rights of Mexico, and, in consequence of it, he demanded his passports. He was informed that the government of the United States did not consider this joint resolution as a violation of any of the rights of Mexico, or that it afforded any just cause of offence to his government; that the republic of Texas was an independent Power, owing no allegiance to Mexico, and constituting no part of her territory or rightful sovereignty and jurisdiction. He was also assured that it was the sincere desire of this government to maintain with that of Mexico relations of peace and good understanding. That functionary, however, notwithstanding these representations and assurances, abruptly terminated his mission, and shortly afterwards left the country. Our Envoy Extraordinary and Minister Plenipotentiary to Mexico was refused all official intercourse with that government, and, after remaining several months, by the permission of his own government he returned to the United States. Thus, by the acts of Mexico, all diplomatic intercourse between the two countries was suspended.

Since that time Mexico has, until recently, occupied an attitude of hostility towards the United States—has been marshalling and organizing armies, issuing proclamations, and avowing the intention to make war on the United States, either by an open declaration, or by invading Texas. Both the Congress and convention of the people of Texas invited this government to send an army into that territory, to protect and defend them against the menaced attack. The moment the terms of annexation offered by the United States were accepted by Texas, the latter became so far a part of our own country, as to make it our duty to afford such protection and defence. I therefore deemed it proper, as a precautionary measure, to order a strong squadron to the coasts of Mexico, and to concentrate an efficient military force on the western frontier of Texas. Our army was ordered to take position in the country between the Nueces and the Del Norte, and to repel any invasion of the Texan territory which might be attempted by the Mexican forces. Our squadron in the gulf was ordered to co-operate with the army. But though our army and navy were placed in a position to defend our own and the rights of Texas, they were ordered to commit no act of hostility against Mexico, unless she de-

clared war, or was herself the aggressor by striking the first blow. The result has been, that Mexico has made no aggressive movement, and our military and naval commanders have executed their orders with such discretion, that the peace of the two republics has not been disturbed.

Texas had declared her independence, and maintained it by her arms for more than nine years. She has had an organized government in successful operation during that period. Her separate existence, as an independent State, had been recognised by the United States and the principal Powers of Europe. Treaties of commerce and navigation had been concluded with her by different nations, and it had become manifest to the whole world that any further attempt on the part of Mexico to conquer her, or overthrow her government, would be vain. Even Mexico herself had become satisfied of this fact; and whilst the question of annexation was pending before the people of Texas, during the past summer, the government of Mexico, by a formal act, agreed to recognise the independence of Texas on condition that she would not annex herself to any other Power. The agreement to acknowledge the independence of Texas, whether with or without this condition, is conclusive against Mexico. The independence of Texas is a fact conceded by Mexico herself, and she had no right or authority to prescribe restrictions as to the form of government which Texas might afterwards choose to assume.

But though Mexico cannot complain of the United States on account of the annexation of Texas, it is to be regretted that serious causes of misunderstanding between the two countries continue to exist, growing out of unredressed injuries inflicted by the Mexican authorities and people on the persons and property of citizens of the United States, through a long series of years. Mexico has admitted these injuries, but has neglected and refused to repair them. Such was the character of the wrongs, and such the insults repeatedly offered to American citizens and the American flag by Mexico, in palpable violation of the laws of nations and the treaty between the two countries of the fifth of April, 1831, that they have been repeatedly brought to the notice of Congress by my predecessors. As early as the eighth of February, 1837, the President of the United States declared, in a message to Congress, that "the length of time since some of the injuries have been committed, the repeated and unavailing applications for redress, the wanton character of some of the outrages upon the persons and property of our citizens, upon the officers and flag of the United States, independent of recent insults to this government and people by the late Extraordinary Mexican minister, would justify in the eyes of all nations immediate war." He did not, however, recommend an immediate resort to this extreme measure, which, he declared, "should not be used by just and generous nations, confiding in their strength for injuries committed, if it can be honorably avoided;" but, in a spirit of forbearance, proposed that another demand be made on Mexico for that redress which had been so long and unjustly withheld. In these views, committees of the two houses of Congress, in reports made to their respective bodies, concurred. Since these proceedings more than eight years have elapsed, during which, in addition to the wrongs then complained of, others of an aggravated character have been committed on the persons and property of our citizens. A special agent was sent to Mexico in the summer of 1838, with full authority to make

another and final demand for redress. The demand was made; the Mexican government promised to repair the wrongs of which we complained; and after much delay, a treaty of indemnity with that view was concluded between the two Powers on the eleventh of April, 1839, and was duly ratified by both governments. By this treaty a joint commission was created to adjudicate and decide on the claims of American citizens on the government of Mexico. The commission was organized at Washington on the twenty-fifth day of August, 1840. Their time was limited to eighteen months; at the expiration of which, they had adjudicated and decided claims amounting to two millions twenty-six thousand one hundred and thirty-nine dollars and sixty-eight cents in favor of citizens of the United States against the Mexican government, leaving a large amount of claims undecided. Of the latter, the American commissioners had decided in favor of our citizens claims amounting to nine hundred and twenty-eight thousand six hundred and twenty-seven dollars and eighty-eight cents, which were left unacted on by the umpire authorized by the treaty. Still further claims, amounting to between three and four millions of dollars, were submitted to the board too late to be considered; and were left undisposed of. The sum of two millions twenty-six thousand one hundred and thirty-nine dollars and sixty-eight cents, decided by the board, was a liquidated and ascertained debt due by Mexico to the claimants, and there was no justifiable reason for delaying its payment according to the terms of the treaty. It was not, however, paid. Mexico applied for further indulgence; and, in that spirit of liberality and forbearance which has ever marked the policy of the United States towards that republic, the request was granted; and, on the thirtieth of January, 1843, a new treaty was concluded. By this treaty it was provided, that the interest due on the awards in favor of claimants under the convention of the eleventh of April, 1839, should be paid on the thirtieth of April, 1843; and that "the principal of the said awards, and the interest arising thereon, shall be paid in five years, in equal instalments every three months; the said term of five years to commence on the thirtieth day of April, 1843, as aforesaid." The interest due on the thirtieth day of April, 1843, and the three first of the twenty instalments, have been paid. Seventeen of these instalments remain unpaid, seven of which are now due.

The claims which were left undecided by the joint commission, amounting to more than three millions of dollars, together with other claims for spoliations on the property of our citizens, were subsequently presented to the Mexican government for payment, and were so far recognised that a treaty, providing for their examination and settlement by a joint commission, was concluded and signed at Mexico on the twentieth day of November, 1843. This treaty was ratified by the United States, with certain amendments, to which no just exception could have been taken; but it has not yet received the ratification of the Mexican government. In the mean time, our citizens who suffered great losses, and some of whom have been reduced from affluence to bankruptcy, are without remedy, unless their rights be enforced by their government. Such a continued and unprovoked series of wrongs could never have been tolerated by the United States, had they been committed by one of the principal nations of Europe. Mexico was, however, a neighboring sister republic, which, following our example, had achieved her independence,

and for whose success and prosperity all our sympathies were early enlisted. The United States were the first to recognise her independence, and to receive her into the family of nations, and have ever been desirous of cultivating with her a good understanding. We have, therefore, borne the repeated wrongs she has committed, with great patience, in the hope that a returning sense of justice would ultimately guide her councils, and that we might, if possible, honorably avoid any hostile collision with her.

Without the previous authority of Congress, the Executive possessed no power to adopt or enforce adequate remedies for the injuries we had suffered, or to do more than to be prepared to repel the threatened aggression on the part of Mexico. After our army and navy had remained on the frontier and coasts of Mexico for many weeks, without any hostile movement on her part, though her menaces were continued, I deemed it important to put an end, if possible, to this state of things. With this view, I caused steps to be taken, in the month of September last, to ascertain distinctly, and in an authentic form, what the designs of the Mexican government were; whether it was their intention to declare war, or invade Texas, or whether they were disposed to adjust and settle, in an amicable manner, the pending differences between the two countries. On the ninth of November an official answer was received, that the Mexican government consented to renew the diplomatic relations which had been suspended in March last; and for that purpose were willing to accredit a minister from the United States. With a sincere desire to preserve peace, and restore relations of good understanding between the two republics, I waived all ceremony as to the manner of renewing diplomatic intercourse between them; and, assuming the initiative, on the tenth of November a distinguished citizen of Louisiana was appointed Envoy Extraordinary and Minister Plenipotentiary to Mexico, clothed with full powers to adjust, and definitively settle, all pending differences between the two countries, including those of boundary between Mexico and the State of Texas. The minister appointed has set out on his mission, and is probably by this time near the Mexican capital. He has been instructed to bring the negotiation with which he is charged to a conclusion at the earliest practicable period; which, it is expected, will be in time to enable me to communicate the result to Congress during the present session. Until that result is known, I forbear to recommend to Congress such ulterior measures of redress for the wrongs and injuries we have so long borne, as it would have been proper to make had no such negotiation been instituted.

Congress appropriated, at the last session, the sum of two hundred and seventy-five thousand dollars for the payment of the April and July instalments of the Mexican indemnities for the year 1844: "Provided it shall be ascertained to the satisfaction of the American government that said instalments have been paid by the Mexican government to the agent appointed by the United States to receive the same, in such manner as to discharge all claim on the Mexican government, and said agent to be delinquent in remitting the money to the United States."

The unsettled state of our relations with Mexico has involved this subject in much mystery. The first information, in an authentic form, from the agent of the United States appointed under the administration of my predecessor, was received at the State Department on the ninth of No-

vember last. This is contained in a letter, dated the seventeenth of October, addressed by him to one of our citizens then in Mexico, with a view of having it communicated to that department. From this it appears that the agent, on the twentieth of September, 1844, gave a receipt to the treasury of Mexico for the amount of the April and July instalments of the indemnity. In the same communication, however, he asserts that he had not received a single dollar in cash; but that he holds such securities as warranted him at the time in giving the receipt, and entertains no doubt but that he will eventually obtain the money. As these instalments appear never to have been actually paid by the government of Mexico to the agent, and as that government has not therefore been released so as to discharge the claim, I do not feel myself warranted in directing payment to be made to the claimants out of the treasury, without further legislation. Their case is, undoubtedly, one of much hardship; and it remains for Congress to decide whether any, and what, relief ought to be granted to them. Our minister to Mexico has been instructed to ascertain the facts of the case from the Mexican government, in an authentic and official form, and report the result with as little delay as possible.

My attention was early directed to the negotiation, which, on the fourth of March last, I found pending at Washington between the United States and Great Britain, on the subject of the Oregon territory. Three several attempts had been previously made to settle the questions in dispute between the two countries, by negotiation, upon the principle of compromise; but each had proved unsuccessful.

These negotiations took place at London, in the years 1818, 1824, and 1826; the two first under the administration of Mr. Monroe, and the last under that of Mr. Adams. The negotiation of 1818 having failed to accomplish its object, resulted in the convention of the twentieth of October of that year. By the third article of that convention, it was "agreed, that any country that may be claimed by either party on the northwest coast of America, westward of the Stony mountains, shall, together with its harbors, bays, and creeks, and the navigation of all rivers within the same, be free and open for the term of ten years from the date of the signature of the present convention, to the vessels, citizens, and subjects of the two Powers; it being well understood that this agreement is not to be construed to the prejudice of any claim which either of the two high contracting parties may have to any part of the said country, nor shall it be taken to affect the claims of any other Power or State to any part of the said country; the only object of the high contracting parties in that respect being to prevent disputes and differences among themselves."

The negotiation of 1824 was productive of no result, and the convention of 1818 was left unchanged.

The negotiation of 1826, having also failed to effect an adjustment by compromise, resulted in the convention of August the sixth, 1827, by which it was agreed to continue in force, for an indefinite period, the provisions of the third article of the convention of the twentieth of October, 1818; and it was further provided, that "it shall be competent, however, to either of the contracting parties, in case either should think fit, at any time after the twentieth of October, 1828, on giving due notice of twelve months to the other contracting party, to annul and abrogate this convention; and it shall, in such case, be accordingly entirely annulled and ab-

rogated after the expiration of the said term of notice." In these attempts to adjust the controversy, the parallel of the forty-ninth degree of north latitude had been offered by the United States to Great Britain, and in those of 1818 and 1826, with a further concession of the free navigation of the Columbia river south of that latitude. The parallel of the forty-ninth degree, from the Rocky mountains to its intersection with the northeasternmost branch of the Columbia, and thence down the channel of that river to the sea, had been offered by Great Britain, with an addition of a small detached territory north of the Columbia. Each of these propositions had been rejected by the parties respectively.

In October, 1843, the Envoy Extraordinary and Minister Plenipotentiary of the United States in London was authorized to make a similar offer to those made in 1818 and 1826. Thus stood the question, when the negotiation was shortly afterwards transferred to Washington; and, on the twenty-third of August, 1844, was formally opened, under the direction of my immediate predecessor. Like all the previous negotiations, it was based upon principles of "compromise;" and the avowed purpose of the parties was, "to treat of the respective claims of the two countries to the Oregon territory, with the view to establish a permanent boundary between them westward of the Rocky mountains to the Pacific ocean." Accordingly, on the twenty-sixth of August, 1844, the British plenipotentiary offered to divide the Oregon territory by the forty-ninth parallel of north latitude, from the Rocky mountains to the point of its intersection with the northeasternmost branch of the Columbia river, and thence down that river to the sea; leaving the free navigation of the river to be enjoyed in common by both parties—the country south of this line to belong to the United States, and that north of it to Great Britain. At the same time, he proposed, in addition, to yield to the United States a detached territory, north of the Columbia, extending along the Pacific and the Straits of Fuca, from Bulfinch's harbor inclusive, to Hood's canal, and to make free to the United States any port or ports south of latitude forty-nine degrees, which they might desire, either on the main land, or on Quadra and Vancouver's island. With the exception of the free ports, this was the same offer which had been made by the British, and rejected by the American government, in the negotiation of 1826. This proposition was properly rejected by the American plenipotentiary on the day it was submitted. This was the only proposition of compromise offered by the British plenipotentiary. The proposition on the part of Great Britain having been rejected, the British plenipotentiary requested that a proposal should be made by the United States for "an equitable adjustment of the question."

When I came into office, I found this to be the state of the negotiation. Though entertaining the settled conviction, that the British pretensions of title could not be maintained to any portion of the Oregon territory upon any principle of public law recognised by nations, yet, in deference to what had been done by my predecessors, and especially in consideration that propositions of compromise had been three made, by two preceding administrations, to adjust the question on the parallel of forty-nine degrees, and in two of them yielding to Great Britain the free navigation of the Columbia, and that the pending negotiation had been commenced on the basis of compromise, I deemed it to be my duty not abruptly to break it off. In consideration, too, that under the conventions of 1818

and 1827, the citizens and subjects of the two Powers held a joint occupancy of the country, I was induced to make another effort to settle this long-pending controversy in the spirit of moderation which had given birth to the renewed discussion. A proposition was accordingly made, which was rejected by the British plenipotentiary, who, without submitting any other proposition, suffered the negotiation on his part to drop, expressing his trust that the United States would offer what he saw fit to call "some further proposal for the settlement of the Oregon question, more consistent with fairness and equity, and with the reasonable expectations of the British government." The proposition thus offered and rejected repeated the offer of the parallel of forty-nine degrees of north latitude, which had been made by two preceding administrations, but without proposing to surrender to Great Britain, as they had done, the free navigation of the Columbia river. The right of any foreign Power to the free navigation of any of our rivers, through the heart of our country, was one which I was unwilling to concede. It also embraced a provision to make free to Great Britain any port or ports on the cap of Quadra and Vancouver's island, south of this parallel. Had this been a new question, coming under discussion for the first time, this proposition would not have been made. The extraordinary and wholly inadmissible demands of the British government, and the rejection of the proposition made in deference alone to what had been done by my predecessors, and the implied obligation which their acts seemed to impose, afford satisfactory evidence that no compromise which the United States ought to accept can be effected. With this conviction, the proposition of compromise which had been made and rejected, was, by my direction, subsequently withdrawn, and our title to the whole Oregon territory asserted, and, as is believed, maintained by irrefragable facts and arguments.

The civilized world will see in these proceedings a spirit of liberal concession on the part of the United States; and this government will be relieved from all responsibility which may follow the failure to settle the controversy.

All attempts at compromise having failed, it becomes the duty of Congress to consider what measures it may be proper to adopt for the security and protection of our citizens now inhabiting, or who may hereafter inhabit Oregon, and for the maintenance of our just title to that territory. In adopting measures for this purpose, care should be taken that nothing be done to violate the stipulations of the convention of 1827, which is still in force. The faith of treaties, in their letter and spirit, has ever been, and, I trust, will ever be, scrupulously observed by the United States. Under that convention, a year's notice is required to be given by either party to the other, before the joint occupancy shall terminate, and before either can rightfully assert or exercise exclusive jurisdiction over any portion of the territory. This notice it would, in my judgment, be proper to give; and I recommend that provision be made by law for giving it accordingly, and terminating in this manner the convention of the sixth of August, 1827.

It will become proper for Congress to determine what legislation they can, in the mean time, adopt without violating this convention. Beyond all question, the protection of our laws and our jurisdiction, civil and criminal, ought to be immediately extended over our citizens in Oregon. They have had just cause to complain of our long neglect in this par-

ticular, and have, in consequence, been compelled, for their own security and protection, to establish a provisional government for themselves. Strong in their allegiance and ardent in their attachment to the United States, they have been thus cast upon their own resources. They are anxious that our laws should be extended over them, and I recommend that this be done by Congress with as little delay as possible, in the full extent to which the British Parliament have proceeded in regard to British subjects in that territory, by their act of July the second, 1821, "for regulating the fur-trade, and establishing a criminal and civil jurisdiction within certain parts of North America." By this act Great Britain extended her laws and jurisdiction, civil and criminal, over her subjects engaged in the fur-trade in that territory. By it, the courts of the province of Upper Canada were empowered to take cognizance of causes civil and criminal. Justices of the peace and other judicial officers were authorized to be appointed in Oregon, with power to execute all process issuing from the courts of that province, and to "sit and hold courts of record for the trial of criminal offences and misdemeanors," not made the subject of capital punishment, and also of civil cases, where the cause of action shall not "exceed in value the amount or sum of two hundred pounds."

Subsequent to the date of this act of Parliament, a grant was made from the "British crown" to the Hudson's Bay Company, of the exclusive trade with the Indian tribes in the Oregon territory, subject to a reservation that it shall not operate to the exclusion "of the subjects of any foreign States who, under or by force of any convention for the time being, between us and such foreign States respectively, may be entitled to, and shall be engaged in, the said trade."

It is much to be regretted, that while under this act British subjects have enjoyed the protection of British laws and British judicial tribunals throughout the whole of Oregon, American citizens in the same territory have enjoyed no such protection from their government. At the same time, the result illustrates the character of our people and their institutions. In spite of this neglect, they have multiplied, and their number is rapidly increasing in that territory. They have made no appeal to arms, but have peacefully fortified themselves in their new homes, by the adoption of republican institutions for themselves; furnishing another example of the truth that self-government is inherent in the American breast, and must prevail. It is due to them that they should be embraced and protected by our laws.

It is deemed important that our laws regulating trade and intercourse with the Indian tribes east of the Rocky mountains, should be extended to such tribes as dwell beyond them.

The increasing emigration to Oregon, and the care and protection which is due from the government to its citizens in that distant region, make it our duty, as it is our interest, to cultivate amicable relations with the Indian tribes of that territory. For this purpose, I recommend that provision be made for establishing an Indian agency, and such sub-agencies as may be deemed necessary, beyond the Rocky mountains.

For the protection of emigrants, whilst on their way to Oregon, against the attacks of the Indian tribes occupying the country through which they pass, I recommend that a suitable number of stockades and block-house forts be erected along the usual route between our frontier settle-

ments on the Missouri and the Rocky mountains; and that an adequate force of mounted riflemen be raised to guard and protect them on their journey. The immediate adoption of these recommendations by Congress will not violate the provisions of the existing treaty. It will be doing nothing more for American citizens than British laws have long since done for British subjects in the same territory.

It requires several months to perform the voyage by sea from the Atlantic States to Oregon; and although we have a large number of whale ships in the Pacific, but few of them afford an opportunity of interchanging intelligence, without great delay, between our settlements in that distant region and the United States. An overland mail is believed to be entirely practicable, and the importance of establishing such a mail, at least once a month, is submitted to the favorable consideration of Congress.

It is submitted to the wisdom of Congress to determine whether, at their present session, and until after the expiration of the year's notice, any other measures may be adopted consistently with the convention of 1827, for the security of our rights and the government and protection of our citizens in Oregon. That it will ultimately be wise and proper to make liberal grants of land to the patriotic pioneers, who, amidst privations and dangers, lead the way through savage tribes inhabiting the vast wilderness intervening between our frontier settlements and Oregon, and who cultivate and are ever ready to defend the soil, I am fully satisfied. To doubt whether they will obtain such grants as soon as the convention between the United States and Great Britain shall have ceased to exist, would be to doubt the justice of Congress; but, pending the year's notice, it is worthy of consideration whether a stipulation to this effect may be made consistently with the spirit of that convention.

The recommendations which I have made, as to the best manner of securing our rights in Oregon, are submitted to Congress with great deference. Should they, in their wisdom, devise any other mode better calculated to accomplish the same object, it shall meet with my hearty concurrence.

At the end of the year's notice, should Congress think it proper to make provision for giving that notice, we shall have reached a period when the national rights in Oregon must either be abandoned or firmly maintained. That they cannot be abandoned without a sacrifice of both national honor and interest, is too clear to admit of doubt.

Oregon is a part of the North American continent, to which, it is confidently affirmed, the title of the United States is the best now in existence. For the grounds on which that title rests, I refer you to the correspondence of the late and present Secretary of State with the British plenipotentiay during the negotiation. The British proposition of compromise, which would make the Columbia the line south of forty-nine degrees, with a trifling addition of detached territory to the United States, north of that river, and would leave on the British side two-thirds of the whole Oregon territory, including the free navigation of the Columbia and all the valuable harbors on the Pacific, can never, for a moment, be entertained by the United States, without an abandonment of their just and clear territorial rights, their own self-respect, and the national honor. For the information of Congress, I communicate herewith the correspondence which took place between the two governments during the late negotiation.

The rapid extension of our settlements over our territories heretofore unoccupied; the addition of new States to our confederacy; the expansion of free principles, and our rising greatness as a nation, are attracting the attention of the Powers of Europe; and lately the doctrine has been broached in some of them, of a "balance of power" on this continent to check our advancement. The United States, sincerely desirous of preserving relations of good understanding with all nations, cannot in silence permit any European interference on the North American continent; and should any such interference be attempted, will be ready to resist it at any and all hazards.

It is well known to the American people and to all nations, that this government has never interfered with the relations subsisting between other governments. We have never made ourselves parties to their wars or their alliances; we have not sought their territories by conquest; we have not mingled with parties in their domestic struggles; and, believing our own form of government to be the best, we have never attempted to propagate it by intrigues, by diplomacy, or by force. We may claim on this continent a like exemption from European interference. The nations of America are equally sovereign and independent with those of Europe. They possess the same rights, independent of all foreign interposition, to make war, to conclude peace, and to regulate their internal affairs. The people of the United States cannot, therefore, view with indifference attempts of European Powers to interfere with the independent action of the nations on this continent. The American system of government is entirely different from that of Europe. Jealousy among the different sovereigns of Europe, lest any one of them might become too powerful for the rest, has caused them anxiously to desire the establishment of what they term the "balance of power." It cannot be permitted to have any application on the North American continent, and especially to the United States. We must ever maintain the principle, that the people of this continent alone have the right to decide their own destiny. Should any portion of them, constituting an independent state, propose to unite themselves with our confederacy, this will be a question for them and us to determine, without any foreign interposition. We can never consent that European Powers shall interfere to prevent such a union, because it might disturb the "balance of power" which they may desire to maintain upon this continent. Near a quarter of a century ago, the principle was distinctly announced to the world, in the annual message of one of my predecessors, that "the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European Power." This principle will apply with greatly increased force, should any European Power attempt to establish any new colony in North America. In the existing circumstances of the world, the present is deemed a proper occasion to reiterate and reaffirm the principle avowed by Mr. Monroe, and to state my cordial concurrence in its wisdom and sound policy. The reassertion of this principle, especially in reference to North America, is, at this day, but the promulgation of a policy which no European Power should cherish the disposition to resist. Existing rights of every European nation should be respected; but it is due alike to our safety and our interests, that the efficient protection of our laws should be extended over our whole territorial limits, and that it should

be distinctly announced to the world as our settled policy, that no future European co ony or dominion shall, with our consent, be planted or established on any part of the North American continent.

A question has recently arisen under the tenth article of the subsisting treaty between the United States and Prussia. By this article, the consuls of the two countries have the right to sit as judges and arbitrators "in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews or of the captain should disturb the order or tranquillity of the country; or the said consuls should require their assistance to cause their decisions to be carried into effect or supported."

The Prussian consul at New Bedford, in June, 1844, applied to Mr. Justice Story to carry into effect a decision made by him between the captain and crew of the Prussian ship Borussia; but the request was refused on the ground that, without previous legislation by Congress, the judiciary did not possess the power to give effect to this article of the treaty. The Prussian government, through their minister here, have complained of this violation of the treaty, and have asked the government of the United States to adopt the necessary measures to prevent similar violations hereafter. Good faith to Prussia, as well as to other nations with whom we have similar treaty stipulations, requires that these should be faithfully observed. I have deemed it proper, therefore, to lay the subject before Congress, and to recommend such legislation as may be necessary to give effect to these treaty obligations.

By virtue of an arrangement made between the Spanish government and that of the United States, in December, 1831, American vessels, since the twenty-ninth of April, 1832, have been admitted to entry in the ports of Spain, including those of the Balearic and Canary islands, on payment of the same tonnage duty of five cents per ton, as though they had been Spanish vessels; and this, whether our vessels arrive in Spain directly from the United States, or indirectly from any other country. When Congress, by the act of the thirteenth of July, 1832, gave effect to this arrangement between the two governments, they confined the reduction of tonnage duty merely to Spanish vessels "coming from a port in Spain," leaving the former discriminating duty to remain against such vessels coming from a port in any other country. It is manifestly unjust that, whilst American vessels arriving in the ports of Spain from other countries pay no more duty than Spanish vessels, Spanish vessels arriving in the ports of the United States from other countries should be subjected to heavy discriminating tonnage duties. This is neither equality nor reciprocity, and is in violation of the arrangement concluded in December, 1831, between the two countries. The Spanish government have made repeated and earnest remonstrances against this inequality, and the favorable attention of Congress has been several times invoked to the subject by my predecessors. I recommend, as an act of justice to Spain, that this inequality be removed by Congress, and that the discriminating duties which have been levied under the act of the thirteenth of July, 1832, on Spanish vessels coming to the United States from any other foreign country, be refunded. This recommendation does not embrace Spanish vessels arriving in the United States from Cuba and Porto Rico, which will

still remain subject to the provisions of the act of June thirtieth, 1834, concerning tonnage-duty on such vessels.

By the act of the fourteenth of July, 1832, coffee was exempted from duty altogether. This exemption was universal, without reference to the country where it was produced, or the national character of the vessel in which it was imported. By the tariff act of the thirtieth of August, 1842, this exemption from duty was restricted to coffee imported in American vessels from the place of its production; whilst coffee imported under all other circumstances was subjected to a duty of twenty per cent. *ad valorem*. Under this act, and our existing treaty with the King of the Netherlands, Java coffee imported from the European ports of that kingdom into the United States, whether in Dutch or American vessels, now pays this rate of duty. The government of the Netherlands complains that such a discriminating duty should have been imposed on coffee, the production of one of its colonies, and which is chiefly brought from Java to the ports of that kingdom, and exported from thence to foreign countries. Our trade with the Netherlands is highly beneficial to both countries, and our relations with them have ever been of the most friendly character. Under all the circumstances of the case, I recommend that this discrimination should be abolished, and that the coffee of Java, imported from the Netherlands, be placed upon the same footing with that imported directly from Brazil and other countries where it is produced.

Under the eighth section of the tariff act of the thirtieth of August, 1842, a duty of fifteen cents per gallon was imposed on Port wine in casks; while, on the red wines of several other countries, when imported in casks, a duty of only six cents per gallon was imposed. This discrimination, so far as regarded the Port wine of Portugal, was deemed a violation of our treaty with that Power, which provides, that "No higher or other duties shall be imposed on the importation into the United States of America of any article the growth, produce, or manufacture of the kingdom and possessions of Portugal, than such as are or shall be payable on the like article being the growth, produce, or manufacture of any other foreign country." Accordingly, to give effect to the treaty, as well as to the intention of Congress, expressed in a proviso to the tariff act itself, that nothing therein contained should be so construed as to interfere with subsisting treaties with foreign nations, a treasury circular was issued on the sixteenth of July, 1844, which, among other things, declared the duty on the Port wine of Portugal, in casks, under the existing laws and treaty, to be six cents per gallon, and directed that the excess of duties which had been collected on such wine should be refunded. By virtue of another clause in the same section of the act, it is provided that all imitations of Port, or any other wines, "shall be subject to the duty provided for the genuine article." Imitations of Port wine, the production of France, are imported to some extent into the United States; and the government of that country now claims that, under a correct construction of the act, these imitations ought not to pay a higher duty than that imposed upon the original Port wine of Portugal. It appears to me to be unequal and unjust, that French imitations of Port wine should be subjected to a duty of fifteen cents, while the more valuable article from Portugal should pay a duty of six cents only per gallon. I therefore recommend to Congress such legislation as may be necessary to correct the inequality.

The late President, in his annual message of December last, recommended an appropriation to satisfy the claims of the Texan government against the United States, which had been previously adjusted, so far as the powers of the Executive extend. These claims arose out of the act of disarming a body of Texan troops under the command of Major Snively, by an officer in the service of the United States, acting under the orders of our government; and the forcible entry into the custom-house at Bryarly's landing, on Red river, by certain citizens of the United States, and taking away therefrom the goods seized by the collector of the customs as forfeited under the laws of Texas. This was a liquidated debt, ascertained to be due to Texas when an independent State. Her acceptance of the terms of annexation proposed by the United States does not discharge or invalidate the claim. I recommend that provision be made for its payment.

The commissioner appointed to China during the special session of the Senate in March last, shortly afterwards set out on his mission in the United States ship Columbus. On arriving at Rio de Janeiro on his passage, the state of his health had become so critical, that, by the advice of his medical attendants, he returned to the United States early in the month of October last. Commodore Biddle, commanding the East India squadron, proceeded on his voyage in the Columbus, and was charged by the commissioner with the duty of exchanging with the proper authorities the ratifications of the treaty lately concluded with the Emperor of China. Since the return of the commissioner to the United States, his health has been much improved, and he entertains the confident belief that he will soon be able to proceed on his mission.

Unfortunately, differences continue to exist among some of the nations of South America, which, following our example, have established their independence; while in others, internal dissensions prevail. It is natural that our sympathies should be warmly enlisted for their welfare; that we should desire that all controversies between them should be amicably adjusted, and their governments administered in a manner to protect the rights, and promote the prosperity of their people. It is contrary, however, to our settled policy, to interfere in their controversies, whether external or internal.

I have thus adverted to all the subjects connected with our foreign relations, to which I deem it necessary to call your attention. Our policy is not only peace with all, but good will towards all the Powers of the earth. While we are just to all, we require that all shall be just to us. Excepting the differences with Mexico and Great Britain, our relations with all civilized nations are of the most satisfactory character. It is hoped that in this enlightened age, these differences may be amicably adjusted.

The Secretary of the Treasury, in his annual report to Congress, will communicate a full statement of the condition of our finances. The imports for the fiscal year ending on the thirtieth of June last, were of the value of one hundred and seventeen millions two hundred and fifty-four thousand five hundred and sixty-four dollars, of which the amount exported was fifteen millions three hundred and forty-six thousand eight hundred and thirty dollars—leaving a balance of one hundred and one millions nine hundred and seven thousand seven hundred and thirty-four dollars for domestic consumption. The exports for the same year

were of the value of one hundred and fourteen millions six hundred and forty six thousand six hundred and six dollars; of which, the amount of domestic articles was ninety nine millions two hundred and ninety-nine thousand seven hundred and seventy-six dollars. The receipts into the treasury during the same year were twenty-nine millions seven hundred and sixty-nine thousand one hundred and thirty-three dollars and fifty-six cents; of which, there were derived from customs twenty-seven millions five hundred and twenty-eight thousand one hundred and twelve dollars and seventy cents; from sales of public lands, two millions seventy-seven thousand and twenty-two dollars and thirty cents; and from incidental and miscellaneous sources, one hundred and sixty-three thousand nine hundred and ninety-eight dollars and fifty-six cents. The expenditures for the same period were twenty-nine millions nine hundred and sixty-eight thousand two hundred and six dollars and ninety-eight cents; of which, eight millions five hundred and eighty-eight thousand one hundred and fifty seven dollars and sixty-two cents were applied to the payment of the public debt. The balance in the treasury on the first of July last, was seven millions six hundred and fifty-eight thousand three hundred and six dollars and twenty-two cents.

The amount of the public debt remaining unpaid on the first of October last, was seventeen millions seventy-five thousand four hundred and forty five dollars and fifty-two cents. Further payments of the public debt would have been made, in anticipation of the period of its reimbursement under the authority conferred upon the Secretary of the Treasury by the acts of July twenty-first, 1841, and of April fifteenth, 1842, and March third, 1843, had not the unsettled state of our relations with Mexico menaced hostile collision with that Power. In view of such a contingency, it was deemed prudent to retain in the treasury an amount unusually large for ordinary purposes.

A few years ago, our whole national debt growing out of the Revolution and the war of 1812 with Great Britain was extinguished, and we presented to the world the rare and noble spectacle of a great and growing people who had fully discharged every obligation. Since that time, the existing debt has been contracted; and small as it is, in comparison with the similar burdens of most other nations, it should be extinguished at the earliest practicable period. Should the state of the country permit, and, especially, if our foreign relations interpose no obstacle, it is contemplated to apply all the moneys in the treasury, as they accrue beyond what is required for the appropriations by Congress, to its liquidation. I cherish the hope of soon being able to congratulate the country on its recovering once more the lofty position which it so recently occupied. Our country, which exhibits to the world the benefits of self-government, in developing all the sources of national prosperity, owes to mankind the permanent example of a nation free from the blighting influence of a public debt.

The attention of Congress is invited to the importance of making suitable modifications and reductions of the rates of duty imposed by our present tariff laws. The object of imposing duties on imports should be to raise revenue to pay the necessary expenses of government. Congress may, undoubtedly, in the exercise of a sound discretion, discriminate in arranging the rates of duty on different articles; but the discriminations should be within the revenue standard, and be made with the view to raise money for the support of government.

It becomes important to understand distinctly what is meant by a revenue standard, the maximum of which should not be exceeded in the rates of duty imposed. It is conceded, and experience proves, that duties may be laid so high as to diminish or prohibit altogether the importation of any given article, and thereby lessen or destroy the revenue which, at lower rates, would be derived from its importation. Such duties exceed the revenue rates, and are not imposed to raise money for the support of government. If Congress levy a duty for revenue of one per cent. on a given article, it will produce a given amount of money to the treasury, and will incidentally and necessarily afford protection or advantage to the amount of one per cent. to the home manufacturer of a similar or like article over the importer. If the duty be raised to ten per cent., it will produce a greater amount of money, and afford greater protection. If it be still raised to twenty, twenty five, or thirty per cent., and if, as it is raised, the revenue derived from it is found to be increased, the protection or advantage will also be increased; but if it be raised to thirty one per cent., and it is found that the revenue produced at that rate is less than at thirty per cent., it ceases to be a revenue duty. The precise point in the ascending scale of duties at which it is ascertained from experience that the revenue is greatest, is the maximum rate of duty which can be laid for the bona fide purpose of collecting money for the support of government. To raise the duties higher than that point, and thereby diminish the amount collected, is to levy them for protection merely, and not for revenue. As long, then, as Congress may gradually increase the rate of duty on a given article, and the revenue is increased by such increase of duty, they are within the revenue standard. When they go beyond that point, and as they increase the duties, the revenue is diminished or destroyed; the act ceases to have for its object the raising of money to support government, but is for protection merely.

It does not follow that Congress should levy the highest duty on all articles of import which they will bear within the revenue standard; for such rates would probably produce a much larger amount than the economical administration of the government would require. Nor does it follow that the duties on all articles should be at the same, or a horizontal rate. Some articles will bear a much higher revenue duty than others. Below the maximum of the revenue standard Congress may and ought to discriminate in the rates imposed, taking care so to adjust them on different articles as to produce in the aggregate the amount which, when added to the proceeds of the sales of public lands, may be needed to pay the economical expenses of the government.

In levying a tariff of duties Congress exercise the taxing power, and for purposes of revenue may select the objects of taxation. They may exempt certain articles altogether, and permit their importation free of duty. On others they may impose low duties. In these classes should be embraced such articles of necessity as are in general use, and especially such as are consumed by the laborer and poor, as well as by the wealthy citizen. Care should be taken that all the great interests of the country, including manufactures, agriculture, commerce, navigation, and the mechanic arts, should, as far as may be practicable, derive equal advantages from the incidental protection which a just system of revenue duties may afford. Taxation, direct or indirect, is a burden, and it should be so imposed as to operate as equally as may be on all classes, in the

proportion of their ability to bear it. To make the taxing power an actual benefit to one class, necessarily increases the burden of the others beyond their proportion, and would be manifestly unjust. The terms "protection to domestic industry," are of popular import; but they should apply under a just system to all the various branches of industry in our country. The farmer or planter who toils yearly in his fields, is engaged in "domestic industry," and is as much entitled to have his labor "protected," as the manufacturer, the man of commerce, the navigator, or the mechanic, who are engaged also in "domestic industry" in their different pursuits. The joint labors of all these classes constitute the aggregate of the "domestic industry" of the nation, and they are equally entitled to the nation's "protection." No one of them can justly claim to be the exclusive recipients of "protection," which can only be afforded by increasing burdens on the "domestic industry" of the others.

If these views be correct, it remains to inquire how far the tariff act of 1842 is consistent with them. That many of the provisions of that act are in violation of the cardinal principles here laid down, all must concede. The rates of duty imposed by it on some articles are prohibitory, and on others so high as greatly to diminish importations, and to produce a less amount of revenue than would be derived from lower rates. They operate as "protection merely," to one branch of "domestic industry," by taxing other branches.

By the introduction of minimums, or assumed and false values, and by the imposition of specific duties, the injustice and inequality of the act of 1842 in its practical operations on different classes and pursuits are seen and felt. Many of the oppressive duties imposed by it under the operation of these principles, range from one per cent. to more than two hundred per cent. They are prohibitory on some articles, and partially so on others, and bear most heavily on articles of common necessity, and but lightly on articles of luxury. It is so framed that much the greatest burden which it imposes is thrown on labor and the poorer classes who are least able to bear it, while it protects capital and exempts the rich from paying their just proportion of the taxation required for the support of government. While it protects the capital of the wealthy manufacturer, and increases his profits, it does not benefit the operatives or laborers in his employment, whose wages have not been increased by it. Articles of prime necessity or of coarse quality and low price, used by the masses of the people, are, in many instances, subjected by it to heavy taxes, while articles of finer quality and higher price, or of luxury, which can be used only by the opulent, are lightly taxed. It imposes heavy and unjust burdens on the farmer, the planter, the commercial man, and those of all other pursuits except the capitalist who has made his investments in manufactures. All the great interests of the country are not, as nearly as may be practicable, equally protected by it.

The government in theory knows no distinction of persons or classes, and should not bestow upon some favors and privileges which all others may not enjoy. It was the purpose of its illustrious founders to base the institutions which they reared upon the great and unchanging principles of justice and equity, conscious that if administered in the spirit in which they were conceived, they would be felt only by the benefits which they diffused, and would secure for themselves a defence in the hearts of the people more powerful than standing armies, and all the means and ap-

pliances invented to sustain governments founded in injustice and oppression.

The well known fact that the tariff act of 1842 was passed by a majority of one vote in the Senate, and two in the House of Representatives, and that some of those who felt themselves constrained, under the peculiar circumstances existing at the time, to vote in its favor, proclaimed its defects, and expressed their determination to aid in its modification on the first opportunity, affords strong and conclusive evidence that it was not intended to be permanent, and of the expediency and necessity of its thorough revision.

In recommending to Congress a reduction of the present rates of duty, and a revision and modification of the act of 1842, I am far from entertaining opinions unfriendly to the manufacturers. On the contrary, I desire to see them prosperous, as far as they can be so, without imposing unequal burdens on other interests. The advantage under any system of indirect taxation, even within the revenue standard, must be in favor of the manufacturing interest; and of this, no other interest will complain.

I recommend to Congress the abolition of the minimum principle, or assumed, arbitrary, and false values, and of specific duties, and the substitution in their place of *ad valorem* duties, as the fairest and most equitable indirect tax which can be imposed. By the *ad valorem* principle, all articles are taxed according to their cost or value, and those which are of inferior quality, or of small cost, bear only the just proportion of the tax with those which are of superior quality or greater cost. The articles consumed by all are taxed at the same rate. A system of *ad valorem* revenue duties, with proper discriminations and proper guards against frauds in collecting them, it is not doubted, will afford ample incidental advantages to the manufacturers, and enable them to derive as great profits as can be derived from any other regular business. It is believed that such a system, strictly within the revenue standard, will place the manufacturing interests on a stable footing, and inure to their permanent advantage; while it will, as nearly as may be practicable, extend to all the great interests of the country the incidental protection which can be afforded by our revenue laws. Such a system, when once firmly established, would be permanent, and not be subject to the constant complaints, agitations, and changes which must ever occur when duties are not laid for revenue, but for the "protection merely" of a favored interest.

In the deliberations of Congress on this subject, it is hoped that a spirit of mutual concession and compromise between conflicting interests may prevail, and that the result of their labors may be crowned with the happiest consequences.

By the constitution of the United States it is provided, that "no money shall be drawn from the treasury but in consequence of appropriations made by law." A public treasury was undoubtedly contemplated and intended to be created, in which the public money should be kept from the period of collection until needed for public uses. In the collection and disbursement of the public money, no agencies have ever been employed by law except such as were appointed by the government, directly responsible to it, and under its control. The safe keeping of the public money should be confided to a public treasury created by law, and under like responsibility and control. It is not to be imagined that the framers

of the constitution could have intended that a treasury should be created as a place of deposite and safe keeping of the public money which was irresponsible to the government. The first Congress under the constitution, by the act of the second of September, 1789, "to establish the Treasury Department," provided for the appointment of a treasurer, and made it his duty "to receive and keep the moneys of the United States," and "at all times to submit to the Secretary of the Treasury and the Comptroller, or either of them, the inspection of the moneys in his hands."

That banks, national or state, could not have been intended to be used as a substitute for the treasury spoken of in the constitution, as keepers of the public money, is manifest from the fact, that at that time there was no national bank, and but three or four State banks of limited capital existed in the country. Their employment as depositories was at first resorted to, to a limited extent, but with no avowed intention of continuing them permanently, in place of the treasury of the constitution. When they were afterwards from time to time employed, it was from motives of supposed convenience.

Our experience has shown, that when banking corporations have been the keepers of the public money, and been thereby made in effect the treasury, the government can have no guaranty that it can command the use of its own money for public purposes. The late Bank of the United States proved to be faithless. The State banks which were afterwards employed were faithless. But a few years ago, with millions of public money in their keeping, the government was brought almost to bankruptcy, and the public credit seriously impaired, because of their inability or indisposition to pay, on demand, to the public creditors, in the only currency recognised by the constitution. Their failure occurred in a period of peace, and great inconvenience and loss were suffered by the public from it. Had the country been involved in a foreign war, that inconvenience and loss would have been much greater, and might have resulted in extreme public calamity. The public money should not be mingled with the private funds of banks or individuals, or be used for private purposes. When it is placed in banks for safe keeping, it is in effect loaned to them without interest, and is loaned by them upon interest to the borrowers from them. The public money is converted into banking capital, and is used and loaned out for the private profit of bank stockholders, and when called for, (as was the case in 1837,) it may be in the pockets of the borrowers from the banks, instead of being in the public treasury contemplated by the constitution. The framers of the constitution could never have intended that the money paid into the treasury should be thus converted to private use, and placed beyond the control of the government.

Banks which hold the public money are often tempted, by a desire of gain, to extend their loans, increase their circulation, and thus stimulate, if not produce a spirit of speculation and extravagance, which sooner or later must result in ruin to thousands. If the public money be not permitted to be thus used, but be kept in the treasury and paid out to the public creditors in gold and silver, the temptation afforded by its deposite with banks to an undue expansion of their business would be checked, while the amount of the constitutional currency left in circulation would be enlarged by its employment in the public collections and disburse-

ments, and the banks themselves would in consequence be found in a safer and sounder condition.

At present, State banks are employed as depositories, but without adequate regulation of law, whereby the public money can be secured against the casualties and excesses, revulsions, suspensions, and defalcations, to which, from overissues, overtrading, an inordinate desire for gain, or other causes, they are constantly exposed. The Secretary of the Treasury has in all cases, when it was practicable, taken collateral security for the amount which they hold, by the pledge of stocks of the United States, or such of the States as were in good credit. Some of the deposite banks have given this description of security, and others have declined to do so.

Entertaining the opinion that "the separation of the moneys of the government from banking institutions is indispensable for the safety of the funds of the government and the rights of the people," I recommend to Congress that provision be made by law for such separation, and that a constitutional treasury be created for the safe-keeping of the public money. The constitutional treasury recommended is designed as a secure depository for the public money, without any power to make loans or discounts, or to issue any paper whatever as a currency or circulation. I cannot doubt that such a treasury as was contemplated by the constitution should be independent of all banking corporations. The money of the people should be kept in the treasury of the people created by law, and be in the custody of agents of the people chosen by themselves, according to the forms of the constitution; agents who are directly responsible to the government, who are under adequate bonds and oaths, and who are subject to severe punishments for any embezzlement, private use, or misapplication of the public funds, and for any failure in other respects to perform their duties. To say that the people or their government are incompetent, or not to be trusted with the custody of their own money, in their own treasury, provided by themselves, but must rely on the presidents, cashiers, and stockholders of banking corporations, not appointed by them, nor responsible to them, would be to concede that they are incompetent for self-government.

In recommending the establishment of a constitutional treasury, in which the public money shall be kept, I desire that adequate provision be made by law for its safety, and that all Executive discretion or control over it shall be removed, except such as may be necessary in directing its disbursement in pursuance of appropriations made by law.

Under our present land system, limiting the minimum price at which the public lands can be entered to one dollar and twenty-five cents per acre, large quantities of lands of inferior quality remain unsold, because they will not command that price. From the records of the General Land Office it appears, that, of the public lands remaining unsold in the several States and Territories in which they are situated, thirty-nine millions one hundred and five thousand five hundred and seventy-seven acres have been in the market, subject to entry more than twenty years; forty-nine millions six hundred and thirty-eight thousand six hundred and forty-four acres for more than fifteen years; seventy-three millions seventy four thousand and six hundred acres for more than ten years; and one hundred and six millions one hundred and seventy-six thousand nine hundred and sixty-one acres for more than five years. Much the largest

portion of these lands will continue to be unsaleable at the minimum price at which they are permitted to be sold, so long as large territories of lands from which the more valuable portions have not been selected are annually brought into market by the government. With the view to the sale and settlement of these inferior lands, I recommend that the price be graduated and reduced below the present minimum rate, confining the sales at the reduced prices to settlers and cultivators, in limited quantities. If graduated and reduced in price for a limited term to one dollar per acre, and after the expiration of that period for a second and third term to lower rates, a large portion of these lands would be purchased, and many worthy citizens, who are unable to pay higher rates, could purchase homes for themselves and their families. By adopting the policy of graduation and reduction of price, these inferior lands will be sold for their real value, while the States in which they lie will be freed from the inconvenience, if not injustice, to which they are subjected, in consequence of the United States continuing to own large quantities of the public lands within their borders, not liable to taxation for the support of their local governments.

I recommend the continuance of the policy of granting pre-emptions, in its most liberal extent, to all those who have settled, or may hereafter settle, on the public lands, whether surveyed or unsurveyed, to which the Indian title may have been extinguished at the time of settlement. It has been found by experience, that in consequence of combinations of purchasers and other causes, a very small quantity of the public lands, when sold at public auction, commands a higher price than the minimum rate established by law. The settlers on the public lands are, however, but rarely able to secure their homes and improvements at the public sales at that rate; because these combinations, by means of the capital they command, and their superior ability to purchase, render it impossible for the settler to compete with them in the market. By putting down all competition, these combinations of capitalists and speculators are usually enabled to purchase the lands, including the improvements of the settlers, at the minimum price of the government, and either turn them out of their homes, or extort from them, according to their ability to pay, double or quadruple the amount paid for them to the government. It is to the enterprise and perseverance of the hardy pioneers of the West, who penetrate the wilderness with their families, suffer the dangers, the privations, and hardships attending the settlement of a new country, and prepare the way for the body of emigrants who, in the course of a few years, usually follow them, that we are, in a great degree, indebted for the rapid extension and aggrandizement of our country.

Experience has proved that no portion of our population are more patriotic than the hardy and brave men of the frontier, or more ready to obey the call of their country, and to defend her rights and her honor, whenever and by whatever enemy assailed. They should be protected from the grasping speculator, and secured, at the minimum price of the public lands, in the humble homes which they have improved by their labor. With this end in view, all vexations or unnecessary restrictions imposed upon them by the existing pre-emption laws, should be repealed or modified. It is the true policy of the government to afford facilities to its citizens to become the owners of small portions of our vast public domain at low and moderate rates.

The present system of managing the mineral lands of the United States

is believed to be radically defective. More than a million of acres of the public lands, supposed to contain lead and other minerals, have been reserved from sale, and numerous leases upon them have been granted to individuals upon a stipulated rent. The system of granting leases has proved to be not only unprofitable to the government, but unsatisfactory to the citizens who have gone upon the lands, and must, if continued, lay the foundation of much future difficulty between the government and the lessees. According to the official records, the amount of rents received by the government for the years 1841, 1842, 1843, and 1844, was six thousand three hundred and fifty-four dollars and seventy-four cents; while the expenses of the system during the same period, including salaries of superintendents, agents, clerks, and incidental expenses, were twenty-six thousand one hundred and eleven dollars and eleven cents; the income being less than one-fourth of the expenses. To this pecuniary loss may be added the injury sustained by the public in consequence of the destruction of timber, and the careless and wasteful manner of working the mines. The system has given rise to much litigation between the United States and individual citizens, producing irritation and excitement in the mineral region, and involving the government in heavy additional expenditures. It is believed that similar losses and embarrassments will continue to occur, while the present system of leasing these lands remains unchanged. These lands are now under the superintendence and care of the War Department, with the ordinary duties of which they have no proper or natural connexion. I recommend the repeal of the present system, and that these lands be placed under the superintendence and management of the General Land Office, as other public lands, and be brought into market and sold upon such terms as Congress in their wisdom may prescribe, reserving to the government an equitable per centage of the gross amount of mineral product, and that the preemption principle be extended to resident miners and settlers upon them, at the minimum price which may be established by Congress.

I refer you to the accompanying report of the Secretary of War, for information respecting the present situation of the army, and its operations during the past year; the state of our defences; the condition of the public works; and our relations with the various Indian tribes within our limits or upon our borders. I invite your attention to the suggestions contained in that report in relation to these prominent objects of national interest.

When orders were given during the past summer for concentrating a military force on the western frontier of Texas, our troops were widely dispersed, and in small detachments, occupying posts remote from each other. The prompt and expeditious manner in which an army, embracing more than half our peace establishment, was drawn together on an emergency so sudden, reflects great credit on the officers who were intrusted with the execution of these orders, as well as upon the discipline of the army itself. To be in strength to protect and defend the people and territory of Texas, in the event Mexico should commence hostilities, or invade her territories with a large army, which she threatened, I authorized the general assigned to the command of the army of occupation to make requisitions for additional forces from several of the States nearest the Texan territory, and which could most expeditiously furnish them, if, in his opinion, a larger force than that under his command, and the aux-

iliary aid which, under like circumstances, he was authorized to receive from Texas, should be required. The contingency upon which the exercise of this authority depended, has not occurred. The circumstances under which two companies of State artillery from the city of New Orleans were sent into Texas, and mustered into the service of the United States, are fully stated in the report of the Secretary of War. I recommend to Congress that provision be made for the payment of these troops, as well as a small number of Texan volunteers, whom the commanding general thought it necessary to receive or muster into our service.

During the last summer, the first regiment of dragoons made extensive excursions through the Indian country on our borders, a part of them advancing nearly to the possessions of the Hudson's Bay Company in the north, and a part as far as the South Pass of the Rocky mountains, and the head waters of the tributary streams of the Colorado of the West. The exhibition of this military force among the Indian tribes in those distant regions, and the councils held with them by the commanders of the expeditions, it is believed, will have a salutary influence in restraining them from hostilities among themselves, and maintaining friendly relations between them and the United States. An interesting account of one of these excursions accompanies the report of the Secretary of War. Under the directions of the War Department, Brevet Captain Fremont, of the corps of topographical engineers, has been employed since 1842 in exploring the country west of the Mississippi, and beyond the Rocky mountains. Two expeditions have already been brought to a close, and the reports of that scientific and enterprising officer have furnished much interesting and valuable information. He is now engaged in a third expedition; but it is not expected that this arduous service will be completed in season to enable me to communicate the result to Congress at the present session.

Our relations with the Indian tribes are of a favorable character. The policy of removing them to a country designed for their permanent residence, west of the Mississippi and without the limits of the organized States and Territories, is better appreciated by them than it was a few years ago; while education is now attended to, and the habits of civilized life are gaining ground among them.

Serious difficulties of long standing continue to distract the several parties into which the Cherokees are unhappily divided. The efforts of the government to adjust the difficulties between them, have heretofore proved unsuccessful; and there remains no probability that this desirable object can be accomplished without the aid of further legislation by Congress. I will, at an early period of your session, present the subject for your consideration, accompanied with an exposition of the complaints and claims of the several parties into which the nation is divided, with a view to the adoption of such measures by Congress as may enable the Executive to do justice to them respectively, and to put an end, if possible, to the dissensions which have long prevailed, and still prevail, among them.

I refer you to the report of the Secretary of the Navy for the present condition of that branch of the national defence; and for grave suggestions, having for their object the increase of its efficiency, and a greater economy in its management. During the past year the officers and men have performed their duty in a satisfactory manner. The orders which have been given, have been executed with promptness and fidelity. A

larger force than has often formed one squadron under our flag was readily concentrated in the Gulf of Mexico, and apparently without unusual effort. It is especially to be observed, that notwithstanding the union of so considerable a force, no act was committed that even the jealousy of an irritated power could construe as an act of aggression; and that the commander of the squadron, and his officers, in strict conformity with their instructions, holding themselves ever ready for the most active duty, have achieved the still purer glory of contributing to the preservation of peace. It is believed that at all our foreign stations the honor of our flag has been maintained, and that generally our ships of war have been distinguished for their good discipline and order. I am happy to add, that the display of maritime force which was required by the events of the summer has been made wholly within the usual appropriations for the service of the year, so that no additional appropriations are required.

The commerce of the United States, and with it the navigating interests, have steadily and rapidly increased since the organization of our government, until, it is believed, we are now second to but one Power in the world, and at no distant day we shall probably be inferior to none. Exposed as they must be, it has been a wise policy to afford to these important interests protection with our ships of war, distributed in the great highways of trade throughout the world. For more than thirty years appropriations have been made, and annually expended, for the gradual increase of our naval forces. In peace, our navy performs the important duty of protecting our commerce; and, in the event of war, will be, as it has been, a most efficient means of defence.

The successful use of steam navigation on the ocean has been followed by the introduction of war steamers in great and increasing numbers into the navies of the principal maritime Powers of the world. A due regard to our own safety and to an efficient protection to our large and increasing commerce demands a corresponding increase on our part. No country has greater facilities for the construction of vessels of this description than ours, or can promise itself greater advantages from their employment. They are admirably adapted to the protection of our commerce, to the rapid transmission of intelligence, and to the coast defence. In pursuance of the wise policy of a gradual increase of our navy, large supplies of live oak timber, and other materials for ship building, have been collected, and are now under shelter and in a state of good preservation, while iron steamers can be built with great facility in various parts of the Union. The use of iron as a material, especially in the construction of steamers, which can enter with safety many of the harbors along our coast now inaccessible to vessels of greater draught, and the practicability of constructing them in the interior, strongly recommends that liberal appropriations should be made for this important object. Whatever may have been our policy in the earlier stages of the government, when the nation was in its infancy, our shipping interests and commerce comparatively small, our resources limited, our population sparse and scarcely extending beyond the limits of the original thirteen States, that policy must be essentially different now that we have grown from three to more than twenty millions of people,—that our commerce, carried in our own ships, is found in every sea, and that our territorial boundaries and settlements have been so greatly expanded. Neither our commerce, nor our long line of coast on the ocean and on the lakes, can be success-

fully defended against foreign aggression by means of fortifications alone. These are essential at important commercial and military points, but our chief reliance for this object must be on a well-organized, efficient navy. The benefits resulting from such a navy are not confined to the Atlantic States. The productions of the interior which seek a market abroad, are directly dependent on the safety and freedom of our commerce. The occupation of the Balize below New Orleans by a hostile force would embarrass, if not stagnate, the whole export trade of the Mississippi, and affect the value of the agricultural products of the entire valley of that mighty river and its tributaries.

It has never been our policy to maintain large standing armies in time of peace. They are contrary to the genius of our free institutions, would impose heavy burdens on the people, and be dangerous to public liberty. Our reliance for protection and defence on the land must be mainly on our citizen soldiers, who will be ever ready, as they ever have been ready in times past, to rush with alacrity, at the call of their country, to her defence. This description of force, however, cannot defend our coast, harbors, and inland seas, nor protect our commerce on the ocean or the lakes. These must be protected by our navy.

Considering an increased naval force, and especially of steam vessels corresponding with our growth and importance as a nation, and proportioned to the increased and increasing naval power of other nations, of vast importance as regards our safety, and the great and growing interests to be protected by it, I recommend the subject to the favorable consideration of Congress.

The report of the Postmaster General herewith communicated contains a detailed statement of the operations of his department during the past year. It will be seen that the income from postages will fall short of the expenditures for the year between one and two millions of dollars. This deficiency has been caused by the reduction of the rates of postage, which was made by the act of the third of March last. No principle has been more generally acquiesced in by the people than that this department should sustain itself by limiting its expenditures to its income. Congress has never sought to make it a source of revenue for general purposes, except for a short period during the last war with Great Britain, nor should it ever become a charge on the general treasury. If Congress shall adhere to this principle, as I think they ought, it will be necessary either to curtail the present mail service, so as to reduce the expenditures, or so to modify the act of the third of March last as to improve its revenues. The extension of the mail service, and the additional facilities which will be demanded by the rapid extension and increase of population on our western frontier, will not admit of such curtailment as will materially reduce the present expenditures. In the adjustment of the tariff of postages, the interests of the people demand that the lowest rates be adopted which will produce the necessary revenue to meet the expenditures of the department. I invite the attention of Congress to the suggestions of the Postmaster General on this subject, under the belief that such a modification of the late law may be made as will yield sufficient revenue without further calls on the treasury, and with very little change in the present rates of postage.

Proper measures have been taken, in pursuance of the act of the third of March last, for the establishment of lines of mail steamers between this

and foreign countries. The importance of this service commends itself strongly to favorable consideration.

With the growth of our country, the public business which devolves on the heads of the several executive departments has greatly increased. In some respects, the distribution of duties among them seems to be incongruous, and many of these might be transferred from one to another with advantage to the public interests. A more auspicious time for the consideration of this subject by Congress, with a view to system in the organization of the several departments, and a more appropriate division of the public business, will not probably occur.

The most important duties of the State Department relate to our foreign affairs. By the great enlargement of the family of nations, the increase of our commerce, and the corresponding extension of our consular system, the business of this department has been greatly increased. In its present organization, many duties of a domestic nature, and consisting of details, are devolved on the Secretary of State, which do not appropriately belong to the foreign department of the government, and may properly be transferred to some other department. One of these grows out of the present state of the law concerning the Patent Office, which, a few years since, was a subordinate clerkship, but has become a distinct bureau of great importance. With an excellent internal organization, it is still connected with the State Department. In the transaction of its business, questions of much importance to inventors, and to the community, frequently arise, which, by existing laws, are referred for decision to a board, of which the Secretary of State is a member. These questions are legal, and the connexion which now exists between the State Department and the Patent Office, may, with great propriety and advantage, be transferred to the Attorney General.

In his last annual message to Congress, Mr. Madison invited attention to a proper provision for the Attorney General as "an important improvement in the executive establishment." This recommendation was repeated by some of his successors. The official duties of the Attorney General have been much increased within a few years, and his office has become one of great importance. His duties may be still further increased with advantage to the public interests. As an executive officer, his residence and constant attention at the seat of government are required. Legal questions, involving important principles, and large amounts of public money, are constantly referred to him by the President and executive departments for his examination and decision. The public business under his official management before the judiciary has been so augmented by the extension of our territory, and the acts of Congress authorizing suits against the United States for large bodies of valuable public lands, as greatly to increase his labors and responsibilities. I therefore recommend that the Attorney General be placed on the same footing with the heads of the other executive departments, with such subordinate officers, provided by law for his department, as may be required to discharge the additional duties which have been or may be devolved upon him.

Congress possess the power of exclusive legislation over the District of Columbia, and I commend the interests of its inhabitants to your favorable consideration. The people of this District have no legislative body of their own, and must confide their local as well as their general inter-

ests to representatives in whose election they have no voice, and over whose official conduct they have no control. Each member of the National Legislature should consider himself as their immediate representative, and should be the more ready to give attention to their interests and wants, because he is not responsible to them. I recommend that a liberal and generous spirit may characterize your measures in relation to them. I shall be ever disposed to show a proper regard for their wishes, and, within constitutional limits, shall at all times cheerfully co-operate with you for the advancement of their welfare.

I trust it may not be deemed inappropriate to the occasion for me to dwell for a moment on the memory of the most eminent citizen of our country, who, during the summer that is gone by, has descended to the tomb. The enjoyment of contemplating, at the advanced age of near fourscore years, the happy condition of his country, cheered the last hours of Andrew Jackson, who departed this life in the tranquil hope of a blessed immortality. His death was happy, as his life had been eminently useful. He had an unfaltering confidence in the virtue and capacity of the people, and in the permanence of that free government which he had largely contributed to establish and defend. His great deeds had secured to him the affections of his fellow-citizens, and it was his happiness to witness the growth and glory of his country which he loved so well. He departed amidst the benedictions of millions of freemen. The nation paid its tribute to his memory at his tomb. Coming generations will learn from his example the love of country and the rights of man. In his language on a similar occasion to the present, "I now commend you, fellow-citizens, to the guidance of Almighty God, with a full reliance on His merciful providence for the maintenance of our free institutions; and with an earnest supplication, that whatever errors it may be my lot to commit in discharging the arduous duties which have devolved on me, will find a remedy in the harmony and wisdom of your counsels."

JAMES K. POLK.

WASHINGTON, *December* 2, 1845.

CORRESPONDENCE WITH THE BRITISH MINISTER IN RELATION TO OREGON.

List of papers.

Protocols.

Mr. Fox to Mr. Webster.

WASHINGTON, *November* 15, 1842.

SIR: With reference to our recent conversation upon the question of the Oregon or northwestern boundary, when I conveyed to you the desire of her majesty's government that instructions should, at an early period, be addressed to the United States' minister in London, empowering him to treat with such person as may be appointed by her majesty on the part of Great Britain, for a final settlement of that question, I have now the honor to enclose to you the extract of a despatch addressed to me upon the subject by the Earl of Aberdeen, in which the wishes of her majesty's government are fully and satisfactorily set forth. I feel persuaded that the great importance of the matter at issue, and the friendly and conciliatory manner of Lord Aberdeen's proposal, will induce the President of the United States to bestow thereupon his early and serious attention.

I avail myself of this occasion to renew to you the assurance of my distinguished consideration.

H. S. FOX.

Hon. DANIEL WEBSTER, *&c. &c. &c.*

[Enclosure.—Extract.]

FOREIGN OFFICE, *October* 18, 1842.

SIR: The ratifications of the treaty, concluded on the 9th of August between Great Britain and the United States, were exchanged by me, on the 13th instant, with the minister of the United States accredited to the court of her majesty.

The more important question of the disputed boundary between her majesty's North American provinces and the United States being thus settled, and the feelings which have been mutually produced in the people of both countries by this settlement being evidently favorable, and indicative of a general desire to continue on the best footing with each other, it has appeared to her majesty's government that both parties would act wisely in availing themselves of so auspicious a moment to endeavor to bring to a settlement the only remaining subject of territorial difference, which, although not so hazardous as that of the northeastern boundary, is, nevertheless, even at this moment, not without risk to the good understanding between the two countries, and may, in course of time, be attended with the same description of danger to their mutual peace as the question which has recently been adjusted. I speak of the line of boundary west of the Rocky mountains.

You are aware that Lord Ashburton was furnished with specific and detailed instructions, with respect to the treatment of this point of difference between the two governments, in the general negotiations with which he was intrusted, and which he has brought to a satisfactory issue.

For reasons which it is not necessary here to state at length, that point, after having been made the subject of conference with the American Secretary of State, was not further pressed. The main ground alleged by his lord-

ship for abstaining from proposing to carry on the discussion with respect to the question of the northwest boundary, was the apprehension, lest, by so doing, the settlement of the far more important matter of the northeastern boundary should be impeded, or exposed to the hazard of failure.

This ground of apprehension now no longer exists; and her majesty's government, therefore, being anxious to endeavor to remove, so far as depends on them, all cause, however remote, of even contingent risk to the good understanding now so happily restored between two countries which ought never to be at variance with each other, have determined to propose to the government of the United States to meet them in an endeavor to adjust by treaty the unsettled question of boundary west of the Rocky mountains.

On the receipt of this despatch, therefore, I have to desire that you will propose to Mr. Webster to move the President to furnish the United States' minister at this court with such instructions as will enable him to enter upon the negotiation of this matter with such person as may be appointed by her majesty for that object; and you will assure him, at the same time, that we are prepared to proceed to the consideration of it in a perfect spirit of fairness, and to adjust it on a basis of equitable compromise.

I am, with great truth and regard, sir, your most obedient, humble servant,

ABERDEEN.

H. S. Fox, Esq. &c. &c. &c.

Mr. Webster to Mr. Fox.

DEPARTMENT OF STATE,
Washington, November 25, 1842.

SIR: I have the honor to acknowledge the receipt of your note of the 15th instant, upon the question of the Oregon or northwestern boundary, with an extract of a despatch recently addressed to you on the subject by the Earl of Aberdeen, explanatory of the wishes of her majesty's government—both of which I laid before the President a few days afterwards.

He directed me to say that he concurred entirely in the expediency of making the question respecting the Oregon territory a subject of immediate attention and negotiation between the two governments. He had already formed the purpose of expressing this opinion in his message to Congress: and, at no distant day, a communication will be made to the minister of the United States in London.

I pray you to accept the renewed assurance of my distinguished consideration.

DANIEL WEBSTER.

H. S. Fox, Esq. &c. &c. &c.

Mr. Pakenham to Mr. Upshur.

WASHINGTON, *February* 24, 1844.

Among the matters at present under the consideration of the two gov-

ernments, there is none respecting which the British government are more anxious to come to an early and satisfactory arrangement with the government of the United States than that relating to the boundaries of the Oregon or Columbia territory.

The undersigned, her majesty's envoy extraordinary and minister plenipotentiary, has accordingly been instructed to lose no time in entering into communication with the Secretary of State of the United States upon this subject.

In fulfilment, then, of the commands of his government, the undersigned has the honor to acquaint Mr. Upshur that he will be ready to confer with him, with a view to ulterior negotiation on the subject in question, whensoever it shall suit Mr. Upshur's convenience.

The undersigned is happy in taking advantage of this opportunity to offer to Mr. Upshur the assurance of his high consideration.

R. PAKENHAM.

Hon. ABEL P. UPSHUR, *&c. &c. &c.*

Mr. Upshur to Mr. Pakenham.

DEPARTMENT OF STATE,
Washington, February 26, 1844.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note dated the 24th instant, from Mr. Pakenham, her Britannic majesty's envoy extraordinary and minister plenipotentiary, in which he states that he will be ready to confer with the undersigned, with a view to ulterior negotiation on the subject of the boundaries of the Oregon or Columbia territory, whensoever it shall suit his convenience.

In reply, the undersigned has the honor to inform Mr. Pakenham that he will receive him for that purpose, at the Department of State, to morrow at 11 o'clock, a. m.

The undersigned avails himself with pleasure of the occasion to offer to Mr. Pakenham assurances of his distinguished consideration.

A. P. UPSHUR.

RICHARD PAKENHAM, Esq. *&c. &c. &c.*

Mr. Pakenham to Mr. Calhoun.

WASHINGTON, *July* 22, 1844.

SIR: In the archives of the Department of State will be found a note which I had the honor to address, on the 24th February last, to the late Mr. Upshur, expressing the desire of her majesty's government to conclude with the government of the United States a satisfactory arrangement respecting the boundary of the Oregon or Columbia territory.

The lamented death of Mr. Upshur, which occurred within a few days after the date of that note, the interval which took place between that event and the appointment of a successor, and the urgency and importance of various matters which offered themselves to your attention immediately after your accession to office, sufficiently explain why it has not hitherto

been in the power of your government, sir, to attend to the important matter to which I refer.

But the session of Congress having been brought to a close, and the present being the season of the year when the least public business is usually transacted, it occurs to me that you may now feel at leisure to proceed to the consideration of that subject. At all events, it becomes my duty to recall it to your recollection, and to repeat the earnest desire of her majesty's government, that a question on which so much interest is felt in both countries should be disposed of at the earliest moment consistent with the convenience of the government of the United States.

I have the honor to be, with high consideration, sir, your obedient servant,

R. PAKENHAM.

Hon. JOHN C. CALHOUN, *&c. &c. &c.*

Mr. Calhoun to Mr. Pakenham.

DEPARTMENT OF STATE,
Washington, August 22, 1844.

SIR: The various subjects which necessarily claimed my attention, on entering on the duties of my office, have heretofore, as you justly suppose in your note of the 22d of July last, prevented me from appointing a time to confer with you, and enter on the negotiation in reference to the Oregon territory.

These have, at length, been despatched; and, in reply to the note which you did me the honor to address to me of the date above mentioned, I have to inform you that I am now ready to enter on the negotiation, and for that purpose propose a conference to-morrow at one o'clock, p. m., at the Department of State, if perfectly convenient to you; but, if not, at any other which it may suit your convenience to appoint.

The government of the United States participates in the anxious desire of that of Great Britain, that the subject may be early and satisfactorily arranged.

I have the honor to be, with high consideration, sir, your obedient servant,

J. C. CALHOUN.

TheRight Hon. R. PAKENHAM, *&c. &c. &c.*

Mr. Pakenham to Mr. Calhoun.

WASHINGTON, *August* 22, 1844.

SIR: I have had the honor to receive your note of this morning's date, in which you signify your readiness to enter on the negotiation in reference to the Oregon territory, proposing to me to meet you in conference on that subject to-morrow at one o'clock.

In reply, I have the honor to acquaint you that I shall have great pleasure in waiting on you, at the Department of State, at the hour proposed.

Be pleased to accept the assurance of my distinguished consideration.

R. PAKENHAM.

Hon. JOHN C. CALHOUN, *&c. &c. &c.*

PROTOCOLS.

On the 23d of August, 1844, a conference was held, by appointment, at the office of the Secretary of State, in the city of Washington, between the Hon. John C. Calhoun, Secretary of State of the United States, and the right honorable Richard Pakenham, her Britannic majesty's envoy extraordinary and minister plenipotentiary, both duly authorized by their respective governments to treat of the respective claims of the two countries to the Oregon territory, with the view to establish a permanent boundary between the two countries westward of the Rocky mountains to the Pacific ocean.

The conference was opened by assurances on both sides of the desire of their respective governments to approach the question with an earnest desire, and in the spirit of compromise, to effect an adjustment consistent with the honor and just interests of either party. The plenipotentiaries then proceeded to examine the actual state of the question as it stood at the last unsuccessful attempt to adjust it.

This done, the American plenipotentiary desired to receive from the British plenipotentiary any fresh proposal he might be instructed to offer on the part of his government towards effecting an adjustment.

The British plenipotentiary said he would be ready to offer such a proposal at their next conference, hoping that the American plenipotentiary would be ready to present a proposal on the part of his government. The conference adjourned to meet on Monday the 26th instant.

J. C. CALHOUN.
R. PAKENHAM.

On the 26th of August, 1844, the Second Conference was held between the respective plenipotentiaries, at the office of the Secretary of State.

The British plenipotentiary offered a paper containing a proposal for adjusting the conflicting claims of the two countries. The American plenipotentiary declined the proposal. Some remarks followed in reference to the claims of the two countries to the territory, when it became apparent that a more full understanding of their respective views in reference to them was necessary at this stage, in order to facilitate future proceedings. It was accordingly agreed that written statements, containing their views, should be presented before any further attempt should be made to adjust them.

It was also agreed that the American plenipotentiary should present a statement at the next conference, and that he should inform the British plenipotentiary when he was prepared to hold it.

J. C. CALHOUN.
R. PAKENHAM.

Proposal offered by the British Plenipotentiary at the second conference.

Whereas the proposals made on both sides, in the course of the last negotiation, had been mutually declined, her majesty's government were prepared, in addition to what had already been offered on the part of Great Britain,* and in proof of their earnest desire to arrive at an arrangement suitable to the interests and wishes of both parties, to undertake to make

*The precise nature and terms of the offer on the part of Great Britain, here referred to, are

free to the United States any port or ports which the United States' government might desire, either on the main land or on Vancouver's island, south of latitude 49°.

R. P.

On the 2d of September, 1844, the Third Conference was held at the office of the Secretary of State, according to appointment. The American plenipotentiary presented a written statement of his views of the claims of the United States to the portion of the territory drained by the waters of the Columbia river, marked A, and containing his reasons for declining to accept the proposal offered by the British plenipotentiary at their second conference.

J. C. CALHOUN.
R. PAKENHAM.

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shown by the following extracts from the protocols of the conferences which took place at London in 1824 and in 1826:

Protocol of the twenty-third conference, July 13, 1824.—Extract from the British paper.

"The boundary line between the territories claimed by his Britannic Majesty and those claimed by the United States, to the west, in both cases, of the Rocky mountains, shall be drawn due west along the 49th parallel of north latitude, to the point where that parallel strikes the great northeasternmost branch of the Oregon, or Columbia river,—marked in the maps as McGillivray's river,—thence, down along the middle of the Oregon or Columbia to its junction with the Pacific ocean: the navigation of the whole channel being perpetually free to the subjects and citizens of both parties. The said subjects and citizens being also reciprocally at liberty, during the term of ten years from the date hereof, to pass and repass, by land and by water, and to navigate with their vessels and merchandise all the rivers, bays, harbors, and creeks, as heretofore, on either side of the above mentioned line; and to trade with all and any of the nations free of duty or impost of any kind, subject only to such local regulations as in other respects either of the two contracting parties may find it necessary to enforce within its own limits, and prohibited from furnishing the natives with fire arms and other exceptionable articles to be hereafter enumerated; and it is further especially agreed, that neither of the high contracting parties, their respective subjects or citizens, shall henceforward form any settlements within the limits assigned hereby to the other, west of the Rocky mountains; it being at the same time understood that any settlements already formed by the British to the south and east of the boundary line above described, or by citizens of the United States to the north and west of the same line, shall continue to be occupied and enjoyed at the pleasure of the present proprietors or occupants, without let or hinderance of any kind, until the expiration of the above mentioned term of ten years from the date hereof."

Protocol of the third conference, December 1, 1826.

"The British plenipotentiaries, in order to evince the earnest desire of their government to afford every facility to the final adjustment of the question of boundary, submitted the following terms of accommodation with a view to their reference to the American government:

"That, considering that the possession of a safe and commodious port on the northwest coast of America, fitted for the reception of large ships, might be an object of great interest and importance to the United States, and that no such port was to be found between the 42d degree of latitude and the Columbia river, Great Britain, in still adhering to that river as a basis, was willing so far to modify her former proposal as to concede, as far as she was concerned, to the United States, the possession of Port Discovery, a most valuable harbor on the southern coast of De Fuca's inlet; and to annex thereto all that tract of country comprised within a line to be drawn from Cape Flattery, along the southern shore of De Fuca's inlet to Point Wilson, at the northwestern extremity of Admiralty inlet; from thence along the western shore of that inlet, across the entrance of Hood's inlet, to the point of land forming the northeastern extremity of the said inlet; from thence along the eastern shore of that inlet to the southern extremity of the same; from thence direct to the southern point of Gray's harbor; from thence along the shore of the Pacific to Cape Flattery, as before mentioned.

"They were further willing to stipulate that no works should at any time be erected at the entrance of the river Columbia, or upon the banks of the same, that might be calculated to impede or hinder the free navigation thereof by the vessels or boats of either party."

On the 12th of September, 1844, the Fourth Conference was held at the office of the Secretary of State, when the British plenipotentiary presented his statement, marked D, counter to that of the American plenipotentiary, marked A, presented at the preceding conference.

J. C. CALHOUN.
R. PAKENHAM.

At the Fifth Conference, held at the office of the Secretary of State on the 20th of September, the American plenipotentiary delivered to the British plenipotentiary a statement, marked B, in rejoinder to his counter statement, marked D.

J. C. CALHOUN.
R. PAKENHAM.

The Sixth Conference was held on the 24th of September, when the British plenipotentiary stated that he had read with due attention the statement marked B, presented by the American plenipotentiary at the last conference; but that it had not weakened the impression previously entertained by him with regard to the claims and rights of Great Britain, as explained in the paper lately presented by him, marked D. That, reserving for a future occasion such observations as he might wish to present by way of explanations, in reply to the statement last presented by the American plenipotentiary, he was for the present obliged to declare, with reference to the concluding part of that statement, that he did not feel authorized to enter into discussion respecting the territory north of the 49th parallel of latitude, which was understood by the British government to form the basis of negotiation on the side of the United States, as the line of the Columbia formed that on the side of Great Britain. That the proposal which he had presented was offered by Great Britain as an honorable compromise of the claims and pretensions of both parties, and that it would, of course, be understood as having been made subject to the condition recorded in the protocol of the third conference held between the respective plenipotentiaries in London in December, 1826.*

J. C. CALHOUN.
R. PAKENHAM.

The Seventh Conference was held at the Department of State on the 16th of July, 1845, between the Hon. James Buchanan, Secretary of State, the American plenipotentiary, and the right honorable Richard Pakenham, the British plenipotentiary, when the pending negotiation respecting the Oregon territory was resumed. The American plenipotentiary presented to the British plenipotentiary a statement, marked J. B, bearing date 12th July, 1845, made in compliance with the request of the latter, contained in his statement marked D, that the American plenipotentiary would propose an arrangement for an equitable adjustment of the question; and also define

* The condition here referred to is the *protest* contained in the following extract from the *protocol of the third conference*, held on the 1st of December, 1826: "The British plenipotentiaries * * * * protested against the offer of concession so made being ever taken in any way to prejudice the claims of Great Britain, included in her proposal of 1824, and declared that the offer now made was considered by the British government as not called for by any just comparison of the grounds of those claims, and of the counter claim of the United States; but rather as a sacrifice which the British government had consented to make, with a view to obviate all evils of future difference in respect to the territory west of the Rocky mountains."

the nature and extent of the claims of the United States to the territory north of the valley of the Columbia.

JAMES BUCHANAN.
R. PAKENHAM.

A.

WASHINGTON, *September* 3, 1844.

The undersigned, American plenipotentiary, declines the proposal of the British plenipotentiary on the ground that it would have the effect of restricting the possessions of the United States to limits far more circumscribed than their claims clearly entitle them to. It proposes to limit their northern boundary by a line drawn from the Rocky mountains along the 49th parallel of latitude to the northeasternmost branch of the Columbia river, and thence down the middle of that river to the sea, giving to Great Britain all the country north, and to the United States all south, of that line, except a detached territory extending on the Pacific and the Straits of Fuca, from Bulfinch's harbor to Hood's canal; to which it is proposed, in addition, to make free to the United States any port which the United States' government might desire, either on the main land or on Vancouver's island, south of latitude 49 degrees.

By turning to the map hereto annexed, and on which the proposed boundary is marked in pencil, it will be seen that it assigns to Great Britain almost the entire region on its north side, drained by the Columbia river, lying on its northern bank. It is not deemed necessary to state, at large, the claims of the United States to this territory, and the grounds on which they rest, in order to make good the assertion that it restricts the possessions of the United States within narrower bounds than they are clearly entitled to. It will be sufficient for this purpose, to show that they are fairly entitled to the entire region drained by the river; and, to the establishment of this point, the undersigned proposes accordingly to limit his remarks at present.

Our claims to the portion of the territory drained by the Columbia river may be divided into those we have in our own proper right, and those we have derived from France and Spain. We ground the former, as against Great Britain, on priority of discovery and priority of exploration and settlement. We rest our claim to discovery, as against her, on that of Captain Gray, a citizen of the United States, who, in the ship Columbia, of Boston, passed its bar and anchored in the river, ten miles above its mouth, on the 11th of May, 1792; and who, afterwards, sailed up the river twelve or fifteen miles, and left it on the 20th of the same month, calling it "*Columbia*," after his ship; which name it still retains.

On these facts our claim to the discovery and entrance into the river rests. They are too well attested to be controverted. But they have been opposed by the alleged discoveries of Meares and Vancouver. It is true that the former explored a portion of the coast through which the Columbia flows into the ocean, in 1788, (five years before Captain Gray crossed the bar and anchored in the river,) in order to ascertain whether the river, as laid down in the Spanish charts and called the St. Roc, existed or not; but it is equally true that he did not even discover it. On the contrary, he expressly declares in his account of the voyage, as the result of his observations, that "*we can now safely assert that there is no such river as that of the St.*

Roc, as laid down in the Spanish charts;" and, as if to perpetuate his disappointment, he called the promontory lying north of the inlet where he expected to discover it, Cape *Disappointment*, and the inlet itself *Deception* bay. It is also true that Vancouver, in April, 1792, explored the same coast; but it is no less so that he failed to discover the river, of which his own journal furnishes the most conclusive evidence, as well as his strong conviction that no such river existed. So strong was it indeed, that, when he fell in with Captain Gray shortly afterwards, and was informed by him that he had been off the mouth of a river in latitude 46 degrees 10 minutes, whose outlet was so strong as to prevent his entering, he remained still incredulous, and strongly expressed himself to that effect in his journal. It was shortly after this interview that Captain Gray again visited its mouth, crossed its bar, and sailed up the river as has been stated. After he left it he visited Nootka Sound, where he communicated his discoveries to Quadra, the Spanish commandant at that place, and gave him a chart and description of the mouth of the river. After his departure, Vancouver arrived there in September, when he was informed of the discoveries of Captain Gray, and obtained from Quadra copies of the chart he had left with him. In consequence of the information thus obtained, he was induced to visit again that part of the coast. It was during this visit that he entered the river on the 20th of October and made his survey.

From these facts it is manifest that the alleged discoveries of Meares and Vancouver cannot in the slightest degree shake the claim of Captain Gray to priority of discovery. Indeed, so conclusive is the evidence in his favor, that it has been attempted to evade our claim on the novel and wholly untenable ground that his discovery was made not in a national, but private vessel. Such and so incontestable is the evidence of our claim, as against Great Britain, from priority of discovery, as to the mouth of the river, crossing its bar, entering it, and sailing up its stream, on the voyage of Captain Gray alone, without taking into consideration the prior discovery of the Spanish navigator, Heceta, which will be more particularly referred to hereafter.

Nor is the evidence of the priority of our discovery of the head branches of the river and its exploration less conclusive. Before the treaty was ratified by which we acquired Louisiana, in 1803, an expedition was planned, at the head of which were placed Meriwether Lewis and William Clarke, to explore the river Missouri and its principal branches to their sources, and then to seek and trace to its termination in the Pacific some stream, "*whether the Columbia, the Oregon, the Colorado, or any other which might offer the most direct and practicable water communication across the continent for the purpose of commerce.*" The party began to ascend the Missouri in May, 1804, and in the summer of 1805 reached the head waters of the Columbia river. After crossing many of the streams falling into it, they reached the Kooskooskee, in latitude 43° 34'—descended that to the principal southern branch, which they called Lewis's—followed that to its junction with the great northern branch, which they called Clarke; and thence descended to the mouth of the river, where they landed and encamped, on the north side, on Cape Disappointment, and wintered. The next spring they commenced their return, and continued their exploration up the river, noting its various branches, and tracing some of the principal, and finally arrived at St. Louis in September, 1806, after an absence of two years and four months.

It was this important expedition which brought to the knowledge of the world this great river—the greatest by far on the western side of this continent—with its numerous branches, and the vast regions through which it flows, above the points to which Gray and Vancouver had ascended. It took place many years before it was visited and explored by any subject of Great Britain, or of any other civilized nation, so far as we are informed. It as clearly entitles us to the claim of priority of discovery as to its head branches and the exploration of the river and region through which it passes, as the voyages of Captain Gray and the Spanish navigator, Heceta, entitle us to priority in reference to its mouth and the entrance into its channel.

Nor is our priority of settlement less certain. Establishments were formed by American citizens on the Columbia as early as 1809 and 1810. In the latter year, a company was formed in New York, at the head of which was John Jacob Astor, a wealthy merchant of that city, the object of which was to form a regular chain of establishments on the Columbia river and the contiguous coasts of the Pacific for commercial purposes. Early in the spring of 1811, they made their first establishment on the south side of the river, a few miles above Point George, where they were visited, in July following, by Mr. Thompson, a surveyor and astronomer of the Northwest company, and his party. They had been sent out by that company to forestall the American company in occupying the mouth of the river, but found themselves defeated in their object. The American company formed two other connected establishments higher up the river: one at the confluence of the Okenegan with the north branch of the Columbia, about six hundred miles above its mouth, and the other on the Spokan, a stream falling into the north branch, some fifty miles above. These posts passed into the possession of Great Britain during the war which was declared the next year; but it was provided by the first article of the treaty of Ghent, which terminated it, that "*all territories, places, and possessions whatever, taken by either party from the other during the war, or which may be taken after the signing of the treaty, excepting the islands hereafter mentioned, (in the bay of Fundy,) shall be restored without delay.*" Under this provision, which embraces all the establishments of the American company on the Columbia, Astoria was formally restored on the 6th of October, 1818, by agents duly authorized on the part of the British government to restore the possession, and to an agent duly authorized on the part of the government of the United States to receive it, which placed our possession where it was before it passed into the hands of British subjects.

Such are the facts on which we rest our claims to priority of discovery and priority of exploration and settlement, as against Great Britain, to the region drained by the Columbia river. So much for the claims we have in our own proper right to that region.

To these, we have added the claims of France and Spain. The former, we obtained by the treaty of Louisiana, ratified in 1803; and the latter, by the treaty of Florida, ratified in 1819. By the former, we acquired all the rights which France had to Louisiana "*to the extent it now has (1803) in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into by Spain and other States.*" By the latter, his Catholic majesty "*ceded to the United States all his rights, claims, and pretensions*" to the country lying west of the Rocky mountains, and north of a line drawn on the 42d parallel of latitude, from a point on the south bank of the Arkansas, in that parallel,

to the South sea; that is, to the whole region claimed by Spain west of those mountains, and north of that line.

The cession of Louisiana gave us undisputed title west of the Mississippi, extending to the summit of the Rocky mountains, and stretching south between that river and those mountains to the possessions of Spain, the line between which and ours was afterwards determined by the treaty of Florida. It also added much to the strength of our title to the region beyond the Rocky mountains, by restoring to us the important link of continuity westward to the Pacific, which had been surrendered by the treaty of 1763, as will be hereafter shown.

That continuity furnishes a just foundation for a claim of territory, in connexion with those of discovery and occupation, would seem unquestionable. It is admitted by all, that neither of them is limited by the precise spot discovered or occupied. It is evident that, in order to make either available, it must extend at least some distance beyond that actually discovered or occupied; but how far, as an abstract question, is a matter of uncertainty. It is subject, in each case, to be influenced by a variety of considerations. In the case of an island, it has been usually maintained in practice to extend the claim of discovery or occupancy to the whole; so likewise in the case of a river, it has been usual to extend them to the entire region drained by it, more especially in cases of a discovery and settlement at the mouth; and emphatically so when accompanied by exploration of the river and region through which it flows. Such, it is believed, may be affirmed to be the opinion and practice in such cases since the discovery of this continent. How far the claim of continuity may extend in other cases is less perfectly defined, and can be settled only by reference to the circumstances attending each. When this continent was first discovered, Spain claimed the whole, in virtue of the grant of the Pope; but a claim so extravagant and unreasonable was not acquiesced in by other countries, and could not be long maintained. Other nations, especially England and France, at an early period, contested her claim. They fitted out voyages of discovery, and made settlements on the eastern coasts of North America. They claimed for their settlements usually specific limits along the coasts or bays on which they were formed; and, generally, a region of corresponding width, extending across the entire continent to the Pacific ocean. Such was the character of the limits assigned by England, in the charters which she granted to her former colonies, now the United States, when there were no special reasons for varying from it.

How strong she regarded her claim to the region conveyed by these charters, and extending westward of her settlements, the war between her and France, which was terminated by the treaty of Paris, in 1763, furnishes a striking illustration. That great contest, which ended so gloriously for England, and effected so great and durable a change on this continent, commenced in a conflict between her claims and those of France, resting on her side on this very right of continuity, extending westward from her settlements to the Pacific ocean; and, on the part of France, on the same right, but extending to the region drained by the Mississippi and its waters, on the ground of settlement and exploration. Their respective claims, which led to the war, first clashed on the river Ohio, the waters of which the colonial charters, in their western extension, covered, but which France had been unquestionably the first to settle and explore. If the relative strength of these different claims may be tested by the result of that re-

markable contest, that of continuity westward must be pronounced to be the stronger of the two. England has had at least the advantage of the result, and would seem to be foreclosed against contesting the principle, particularly as against us, who contributed so much to that result, and on whom that contest and her example and pretensions, from the first settlement of our country, have contributed to impress it so deeply and indelibly.

But the treaty of 1763, which terminated that memorable and eventful struggle, yielded, as has been stated, the claims and all the chartered rights of the colonies beyond the Mississippi. The seventh article establishes that river as the permanent boundary between the possessions of Great Britain and France on this continent. So much as relates to the subject is in the following words: "*The confines between the dominions of his Britannic majesty in that part of the world (the continent of America,) shall be fixed irrevocably by a line drawn along the middle of the river Mississippi, from its source to the river Iberville, and from thence by a line drawn along the middle of this river and the lakes Maurepas and Pontchartrain to the sea,*" &c.

This important stipulation, which thus establishes the Mississippi as the line "*fixed irrevocably*" between the dominions of the two countries on this continent, in effect extinguishes in favor of France whatever claim Great Britain may have had to the region lying west of the Mississippi. It of course could not affect the rights of Spain, the only other nation which had any pretence of claim west of that river; but it prevented the right of continuity, previously claimed by Great Britain, from extending beyond it, and transferred it to France. The treaty of Louisiana restored and vested in the United States all the claims acquired by France and surrendered by Great Britain under the provisions of that treaty, to the country west of the Mississippi, and among others the one in question. Certain it is, that France had the same right of continuity, in virtue of her possession of Louisiana, and the extinguishment of the right of England, by the treaty of 1763, to the whole country west of the Rocky mountains, and lying west of Louisiana, as against Spain, which England had to the country westward of the Alleghany mountains, as against France—with this difference, that Spain had nothing to oppose to the claim of France, at the time, but the right of discovery, and even that England has since denied, while France had opposed to the right of England, in her case, that of discovery, exploration, and settlement. It is therefore not at all surprising that France should claim the country west of the Rocky mountains, (as may be inferred from her maps,) on the same principle that Great Britain had claimed and dispossessed her of the regions west of the Alleghany; or that the United States, as soon as they had acquired the rights of France, should assert the same claim, and take measures immediately after to explore it, with a view to occupation and settlement. But since then we have strengthened our title by adding to our own proper claims and those of France the claims also of Spain, by the treaty of Florida, as has been stated.

The claims which we have acquired from her between the Rocky mountains and the Pacific, rest on her priority of discovery. Numerous voyages of discovery, commencing with that of Maldonado in 1528, and ending with that under Galiano and Valdes in 1792, were undertaken by her authority along the northwestern coast of North America. That they discovered and explored not only the entire coast of what is now called the Oregon territory, but still further north, are facts too well established to be

controverted at this day. The voyages which they performed will accordingly be passed over at present without being particularly alluded to, with the exeeption of that of Heceta. His discovery of the mouth of the Columbia river has heen alreadv referred to. It was made on the 15th of August, 1775, many years anterior to the voyages of Meares and Vancouver, and was prior to Cook's, who did not reach the northwestern coast until 1778. The elaims it gave to Spain of priority of discovery were transferred to us, with all others belonging to her, by the treaty of Florida; which, added to the discoveries of Captain Gray, plaees our right to the discovery of the mouth and entrance into the inlet and river beyond all controversy.

It has been objected that we claim under various and conflicting titles, which mutually destroy each other. Such might indeed be the fact, while they were held by different parties; but since we have rightfully acquired both those of Spain and France, and coneentrated the whole in our hands, they mutually blend with each other, and form one strong and connected chain of title against the opposing claims of all others, including Great Britain.

In order to present more fully and perfectly the grounds on which our elaim to the region in qnestion rests, it will now be necessary to turn back to the time when Astoria was restored to us under the provisions of the treaty of Ghent, and to trace what has since occurred between the two countries in reference to the territory, and inquire whether their respective elaims have been affected by the settlements since made in the territory by Great Britain, or the oeeurrences which have since taken place.

The restoration of Astoria took place nuder the provisions of the treaty of Ghent, on the 6th day of October, 1818, the effect of which was to put Mr. Prevost, the agent authorized by our government to receive it, in possession of the establishment, with the right at all times to be reinstated and considered the party in possessiou, as was explicitly admitted by Lord Castlereagh in the first negotiation between the two governments in reference to the treaty. The words of Mr. Rush, our plenipotentiary on that occasion, in his letter to Mr. Adams, then Secretary of State, of the 14th of February, 1818, reporting what passed between him and his lordship, are, "*that Lord Castlereagh admitted in the most ample extent our right to be reinstated, and to be the party in possession while treating of the title.*"

That negotiation terminated in the convention of the 20th of October, 1818—the third article of which is in the following words:

"It is agreed that any country that may be elaimed by either party on the northwest coast of America, westward of the Stony mountains, shall, together with its harbors, bays, and creeks, and the navigation of all rivers within the same, be free and open, for the term of ten years from the date of the signature of the present convention, to the vessels, citizens and subjects of the two powers; it being well understood that this agreement is not to be construed to the prejudice of any elaim which either of the two high contracting parties may have to any part of the said country, nor shall it be taken to affeet the claims of any other power or state to any part of the said eountry; the only object of the high contracting parties, in that respect, being to prevent disputes and differenees amongst themselves."

The two acts—the restoration of our possession and the signature of the convention—were nearly eontemporaneous; the latter taking plaee but fourteen days subsequently to the former. We were then, as admitted by Lord Castlereagh, entitled to be considered as the party in possession, and the con-

vention which stipulated that the territory should be free and open for the term of ten years from the date of its signature, to the vessels, citizens, and subjects of the two countries, without prejudice to any claim which either party may have to any part of the same, preserved and perpetuated all our claims to the territory, including the acknowledged right to be considered the party in possession, as perfectly, during the period of its continuance, as they were the day the convention was signed. Of this there can be no doubt.

After an abortive attempt to adjust the claims of the two parties to the territory in 1824, another negotiation was commenced in 1826, which terminated in renewing, on the 6th of August, 1827, the third article of the convention of 1818, prior to its expiration. It provided for the indefinite extension of all the provisions of the third article of that convention, and also that either party might terminate it at any time it might think fit, by giving one year's notice after the 20th of October, 1828. It took, however, the precaution of providing expressly that "*nothing contained in this convention, or in the third article of the convention of the 20th of October, 1818, hereby continued in force, shall be construed to impair or in any manner affect the claims which either of the contracting parties may have to any part of the country westward of the Stony or Rocky mountains.*" That convention is now in force, and has continued to be so since the expiration of that of 1818. By the joint operation of the two, our right to be considered the party in possession, and all the claims we had to the territory, while in possession, are preserved in as full vigor as they were at the date of its restoration in 1818, without being affected or impaired by the settlements since made by the subjects of Great Britain.

Time, indeed, so far from impairing our claims, has greatly strengthened them since that period; for, since then, the treaty of Florida transferred to us all the rights, claims, and pretensions of Spain to the whole territory, as has been stated. In consequence of this, our claims to the portion drained by the Columbia river, the point now the subject of consideration, have been much strengthened by giving us the incontestable claim to the discovery of the mouth of the river by Heceta, above stated. But it is not in this particular only that it has operated in our favor. Our well-founded claim, grounded on continuity, has greatly strengthened during the same period, by the rapid advance of our population towards the territory; its great increase, especially in the valley of the Mississippi, as well as the greatly increased facility of passing to the territory by more accessible routes, and the far stronger and rapidly swelling tide of population that has recently commenced flowing into it.

When the first convention was concluded, in 1818, our whole population did not exceed nine millions of people. The portion of it inhabiting the States in the great valley of the Mississippi was, probably, under one million seven hundred thousand, of which not more than two hundred thousand were on the west side of that river. Now, our population may be safely estimated at not less than nineteen millions, of which at least eight millions inhabit the States and territories in the valley of the Mississippi, and of which upwards of one million are in the States and territories west of that river. This portion of our population is now increasing far more rapidly than ever, and will, in a short time, fill the whole tier of States on its western bank.

To this great increase of population, especially in he valley of the Mis-

sissippi, may be added the increased facility of reaching the Oregon territory, in consequence of the discovery of the remarkable pass in the Rocky mountains, at the head of the La Platte. The depression is so great, and the pass so smooth, that loaded wagons now travel with facility from Missouri to the navigable waters of the Columbia river. These joint causes have had the effect of turning the current of our population towards the territory, and an emigration estimated at not less than one thousand during the last, and fifteen hundred the present year, has flowed into it. The current thus commenced will no doubt continue to flow with increased volume hereafter. There can, then, be no doubt now that the operation of the same causes which impelled our population westward from the shores of the Atlantic across the Alleghany to the valley of the Mississippi, will impel them onward with accumulating force, across the Rocky mountains, into the valley of the Columbia, and that the whole region drained by it is destined to be peopled by us.

Such are our claims to that portion of the territory, and the grounds on which they rest. The undersigned believes them to be well founded, and trusts that the British plenipotentiary will see in them sufficient reasons why he should decline his proposal.

The undersigned plenipotentiary abstains, for the present, from presenting the claims which the United States may have to other portions of the territory.

The undersigned avails himself of this occasion to renew to the British plenipotentiary assurances of his high consideration.

J. C. CALHOUN.

Right Hon. R. PAKENHAM, &c. &c. &c.

D.

SEPTEMBER 12, 1844.

The undersigned, British plenipotentiary, has studied with much interest and attention the statement marked A, presented by the American plenipotentiary, setting forth the grounds on which he declines the proposal offered by the British plenipotentiary as a compromise of the difficulties of the Oregon question. The arrangement contemplated by that proposal would, in the estimation of the American plenipotentiary, have the effect of restricting the possessions of the United States to limits far more circumscribed than their claims clearly entitle them to.

The claims of the United States to the portion of territory drained by the Columbia river are divided into those adduced by the United States in their own proper right, and those which they have derived from France and Spain.

The former, as against Great Britain, they ground on priority of discovery and priority of exploration and settlement.

The claim derived from France originates in the treaty of 1803, by which Louisiana was ceded to the United States, with all its rights and appurtenances, as fully and in the same manner as they had been acquired by the French republic; and the claim derived from Spain is founded on the treaty concluded with that power in the year 1819, whereby his Catholic majesty ceded to the United States all his rights, claims, and pretensions to

the territories lying east and north of a certain line terminating on the Pacific, in the 42d degree of north latitude.

Departing from the order in which these three separate claims are presented by the American plenipotentiary, the British plenipotentiary will first beg leave to observe, with regard to the claim derived from France, that he has not been able to discover any evidence tending to establish the belief that Louisiana, as originally possessed by France, afterwards transferred to Spain, then retroceded by Spain to France, and ultimately ceded by the latter power to the United States, extended in a westerly direction beyond the Rocky mountains. There is, on the other hand, strong reason to suppose that at the time when Louisiana was ceded to the United States, its acknowledged western boundary was the Rocky mountains. Such appears to have been the opinion of President Jefferson, under whose auspices the acquisition of Louisiana was accomplished.

In a letter written by him in August, 1803, are to be found the following words: "The boundaries (of Louisiana) which I deem not admitting question, are the high lands on the western side of the Mississippi, enclosing all its waters– the Missouri of course—and terminating in the line drawn from the northwest point of the Lake of the Woods to the nearest source of the Mississippi, as lately settled between Great Britain and the United States."

In another and more formal document, dated in July, 1807—that is to say, nearly a year after the return of Lewis and Clarke from their expedition to the Pacific, and fifteen years after Gray had entered the Columbia river—is recorded Mr. Jefferson's opinion of the impolicy of giving offence to Spain, by any intimation that the claims of the United States extended to the Pacific; and we have the authority of an American historian, distinguished for the attention and research which he has bestowed on the whole subject of the Oregon territory, for concluding that the western boundaries of Louisiana, as it was ceded by France to the United States, were those indicated by nature—namely, the high lands separating the waters of the Mississippi from those falling into the Pacific.

From the acquisition, then, of Louisiana, as it was received from France, it seems clear that the United States can deduce no claim to territory west of the Rocky mountains. But even if it were otherwise, and if France had ever possessed or asserted a claim to territory west of the Rocky mountains, as appertaining to the territory of Louisiana, that claim, whatever it might be, was necessarily transferred to Spain when Louisiana was ceded to that power in 1762, and of course became subject to the provisions of the treaty between Spain and Great Britain of 1790, which effectually abrogated the claim of Spain to exclusive dominion over the unoccupied parts of the American continent.

To the observations of the American plenipotentiary respecting the effect of continuity in furnishing a claim to territory, the undersigned has not failed to pay due attention; but he submits that what is said on this head may more properly be considered as demonstrating the greater degree of interest which the United States possess, by reason of contiguity, in acquiring territory in that direction, than as affecting in any way the question of right.

The undersigned will endeavor to show hereafter, that, in the proposal put in on the part of Great Britain, the natural expectations of the United States on the ground of contiguity have not been disregarded.

Next comes to be examined the claim derived from Spain.

It must, indeed, be acknowledged, that, by the treaty of 1819, Spain did convey to the United States all that she had the power to dispose of on the northwest coast of America, north of the 42d parallel of latitude; but she could not, by that transaction, annul or invalidate the rights which she had, by a previous transaction, acknowledged to belong to another power.

By the treaty of 28th October, 1790, Spain acknowledged in Great Britain certain rights with respect to those parts of the western coast of America not already occupied.

This acknowledgment had reference especially to the territory which forms the subject of the present negotiation. If Spain could not make good her own right to exclusive dominion over those regions, still less could she confer such a right on another power: and hence Great Britain argues, that from nothing deduced from the treaty of 1819 can the United States assert a valid claim to exclusive dominion over any part of the Oregon territory.

There remains to be considered the claim advanced by the United States on the ground of prior discovery and prior exploration and settlement.

In that part of the memorandum of the American plenipotentiary which speaks of the Spanish title, it is stated that the mouth of the river afterwards called the Columbia river was first discovered by the Spanish navigator Heceta. The admission of this fact would appear to be altogether irreconcilable with a claim to priority of discovery from anything accomplished by Captain Gray. To one, and to one only, of those commanders, can be conceded the merit of first discovery. If Heceta's claim is acknowledged, then Captain Gray is no longer the discoverer of the Columbia river. If, on the other hand, preference is given to the achievement of Captain Gray, then Heceta's discovery ceases to be of any value. But it is argued that the United States now represent both titles—the title of Heceta and the title of Gray; and, therefore, that under one or the other—it matters not which—enough can be shown to establish a case of prior discovery as against Great Britain. This may be true, as far as relates to the act of first seeing and first entering the mouth of the Columbia river; but if the Spanish claim to prior discovery is to prevail, whatever rights may thereon be founded are necessarily restricted by the stipulations of the treaty of 1790, which forbid a claim to exclusive possession.

If the act of Captain Gray in passing the bar and actually entering the river is to supersede the discovery of the entrance, which is all that is attributed to Heceta, then the principle of progressive or gradual discovery being admitted as conveying, in proportion to the extent of discovery or exploration, superior rights, the operations of Vancouver in entering, surveying, and exploring, to a considerable distance inland, the river Columbia, would, as a necessary consequence, supersede the discovery of Captain Gray, to say nothing of the act of taking possession in the name of his sovereign, which ceremony was duly performed and authentically recorded by Captain Vancouver.

This brings us to an examination of the conflicting claims of Great Britain and the United States on the ground of discovery, which may be said to form the essential point in the discussion, for it has above been shown that the claim derived from France must be considered as of little or no weight, while that derived from Spain, in as far as relates to

exclusive dominion, is neutralized by the stipulations of the Nootka convention.

It will be admitted that when the United States became an independent nation, they possessed no claim, direct or indirect, to the Columbia territory. Their western boundary, in those days, was defined by the treaty of 1783. Great Britain, on the contrary, had, at that time, already directed her attention to the northwest coast of America, as is sufficiently shown by the voyage and discoveries of Captain Cook, who, in 1778, visited and explored a great portion of it from latitude 44° northwards.

That Great Britain was the first to acquire what may be called a beneficial interest in those regions by commercial intercourse, will not, either, be denied. In proof of this fact, we have the voyages of the several British subjects who visited the coast and adjacent islands previously to the dispute with Spain; and that her commerce, actual as well as prospective, in that part of the world, was considered a matter of great national importance, is shown by the resolute measures which she took for its protection, when Spain manifested a disposition to interfere with it.

The discoveries of Meares, in 1788, and the complete survey of the coast and its adjacent islands, from about latitude 40° northwards, which was effected by Captain Vancouver in 1792, 1793, and 1794, would appear to give to Great Britain, as against the United States, as strong a claim on the ground of discovery and exploration coastwise as can well be imagined, limited only by what was accomplished by Captain Gray at the mouth of the Columbia, which, as far as discovery is concerned, forms the strong point on the American side of the question.

In point of accuracy and authenticity, it is believed that the performances of Cook and Vancouver stand pre-eminently superior to those of any other country whose vessels had, in those days, visited the northwest coast, while, in point of value and importance, surely the discovery of a single harbor, although at the mouth of an important river, cannot, as giving a claim to territory, be placed in competition with the vast extent of discovery and survey accomplished by the British navigators.

As regards exploration inland, entire justice must be done to the memorable exploit of MM. Lewis and Clarke; but those distinguished travellers were not the first who effected a passage across the Oregon territory from the Rocky mountains to the Pacific. As far back as 1793, that feat had been accomplished by Mackenzie, a British subject. In the course of this expedition, Mackenzie explored the upper waters of a river since called Frazer's river, which, in process of time, was traced to its junction with the sea near the 49th degree of latitude; thus forming, in point of exploration, a counterpoise to the exploration of that part of the Columbia which was first visited by Lewis and Clarke.

Priority of settlement is the third plea on which the American claim proper is made to rest.

In 1811, an establishment for the purposes of trade was formed at the south side of the Columbia river, near to its mouth, by certain American citizens. This establishment passed, during the war, into the hands of British subjects; but it was restored to the American government, in the year 1818, by an understanding between the two governments. Since when, it has not, however, been in reality occupied by Americans. This is the case of priority of settlement.

The American plenipotentiary lays some stress on the admission attrib-

nted to Lord Castlereagh, then principal Secretary of State for Foreign Affairs, that "the American government had the most ample right to be reinstated, and to be considered the party in possession while treating of the title." The undersigned is not inclined to dispute an assertion resting on such respectable authority; but he must observe, in the first place, that the reservation implied by the words "while treating of the title," exclude any inference which might otherwise be drawn from the preceding words, prejudicial to the title of Great Britain; and, further, that when the authority of the American minister is thus admitted for an observation which is pleaded against England, it is but fair that, on the part of the United States, credit should be given to England for the authenticity of a despatch from Lord Castlereagh to the British minister at Washington, which was communicated verbally to the government of the United States, when the restoration of the establishment called Astoria, or Fort George, was in contemplation, containing a complete reservation of the right of England to the territory at the mouth of the Columbia. (Statement of the British plenipotentiaries, December, 1826.)

In fine, the present state of the question between the two governments appears to be this: Great Britain possesses and exercises, in common with the United States, a right of joint occupancy in the Oregon territory, of which right she can be divested with respect to any part of that territory only by an equitable partition of the whole between the two powers.

It is for obvious reasons desirable that such a partition should take place as soon as possible, and the difficulty appears to be in devising a line of demarcation which shall leave to each party that precise portion of the territory best suited to its interest and convenience.

The British government entertained the hope that by the proposal lately submitted for the consideration of the American government, that object would have been accomplished.

According to the arrangement therein contemplated, the northern boundary of the United States, west of the Rocky mountains, would for a considerable distance be carried along the same parallel of latitude which forms their northern boundary on the eastern side of those mountains; thus uniting the present eastern boundary of the Oregon territory with the western boundary of the United States, from the 49th parallel downwards.

From the point where the 49th degree of latitude intersects the north-eastern branch of the Columbia river, called in that part of its course McGillevray's river, the proposed line of boundary would be along the middle of that river till it joins the Columbia; then along the middle of the Columbia to the ocean; the navigation of the river remaining perpetually free to both parties.

In addition, Great Britain offers a separate territory on the Pacific, possessing an excellent harbor, with a further understanding that any port or ports, whether on Vancouver's island or on the continent south of the 49th parallel, to which the United States might desire to have access, shall be made free ports.

It is believed that by this arrangement ample justice would be done to the claims of the United States, on whatever ground advanced, with relation to the Oregon territory. As regards extent of territory, they would obtain, acre for acre, nearly half of the entire territory to be divided. As relates to the navigation of the principal river, they would enjoy a perfect equality of right with Great Britain; and, with respect to harbors, it will

be seen that Great Britain shows every disposition to consult their convenience in that particular. On the other hand, were Great Britain to abandon the line of the Columbia as a frontier, and to surrender her right to the navigation of that river, the prejudice occasioned to her by such an arrangement would, beyond all proportion, exceed the advantage accruing to the United States from the possession of a few more square miles of territory. It must be obvious to every impartial investigator of the subject that, in adhering to the line of the Columbia, Great Britain is not influenced by motives of ambition with reference to extent of territory, but by considerations of utility, not to say necessity, which cannot be lost sight of, and for which allowance ought to be made in an arrangement professing to be based on considerations of mutual convenience and advantage.

The undersigned believes that he has now noticed all the arguments advanced by the American plenipotentiary, in order to show that the United States are fairly entitled to the entire region drained by the Columbia river. He sincerely regrets that their views on this subject should differ in so many essential respects.

It remains for him to request that as the American plenipotentiary declines the proposal offered on the part of Great Britain, he will have the goodness to state what arrangement he is, on the part of the United States, prepared to propose for an equitable adjustment of the question; and more especially that he will have the goodness to define the nature and extent of the claims which the United States may have to other portions of the territory, to which allusion is made in the concluding part of his statement, as it is obvious that no arrangement can be made with respect to a part of the territory in dispute while a claim is reserved to any portion of the remainder.

The undersigned, British plenipotentiary, has the honor to renew to the American plenipotentiary the assurance of his high consideration.

R. PAKENHAM.

B.

DEPARTMENT OF STATE,
Washington, September 20, 1844.

The undersigned, American plenipotentiary, has read with attention the counter statement of the British plenipotentiary, but without weakening his confidence in the validity of the title of the United States to the territory, as set forth in his statement marked A. As therein set forth, it rests, in the first place, on priority of discovery, sustained by their own proper claims, and those derived from Spain through the treaty of Florida.

The undersigned does not understand the counter statement as denying that the Spanish navigators were the first to discover and explore the entire coasts of the Oregon territory, nor that Heceta was the first who discovered the mouth of Columbia river; nor that Captain Gray was the first to pass its bar, enter its mouth, and sail up its stream; nor that these, if jointly held by the United States, would give them the priority of discovery which they claim. On the contrary, it would seem that the counter statement, from the ground it takes, admits such would be the case, on that supposition; for it assumes that Spain, by the Nootka Sound convention in 1790, divested

herself of all claims to the territory founded on the prior discovery and explorations of her navigators, and that she could consequently transfer none to the United States by the treaty of Florida. Having put aside the claims of Spain by this assumption, the counter statement next attempts to oppose the claims of the United States by those founded on the voyages of Captains Cook and Meares, and to supersede the discovery of Captain Gray, on the ground that Vancouver sailed farther up the Columbia river than he did, although he effected it by the aid of his discoveries and charts.

It will not be expected of the undersigned that he should seriously undertake to repel what he is constrained to regard as a mere assumption, unsustained by any reason. It is sufficient, on his part, to say that, in his opinion, there is nothing in the Nootka Sound convention, or in the transactions which led to it, or in the circumstances attending it, to warrant the assumption. The convention relates wholly to other subjects, and contains not a word in reference to the claims of Spain. It is on this assumption that the counter statement rests its objection to the well-founded American claims to priority of discovery. Without it there would not be a plausible objection left to them.

The two next claims on which the United States rest their title to the territory, as set forth in statement A, are founded on their own proper right, and cannot possibly be affected by the assumed claims of Great Britain derived from the Nootka convention.

The first of these is, priority of discovery and exploration of the headwaters and upper portion of the Columbia river, by Lewis and Clarke; by which that great stream was first brought to the knowledge of the world, with the exception of a small portion near the ocean, including its mouth. This the counter statement admits, but attempts to set off against it the prior discovery of Mackenzie of the headwaters of Frazer's river, quite an inferior stream, which drains the northern portion of the territory. It is clear, that whatever right Great Britain may derive from his discovery, it can in no degree affect the right of the United States to the region drained by the Columbia, which may be emphatically called the river of the territory.

The next of these, founded on their own proper right, is priority of settlement. It is not denied by the counter statement that we formed the first settlements in the portion of the territory drained by the Columbia river; nor does it deny that Astoria, the most considerable of them, was restored under the third article of the treaty of Ghent, by agents on the part of Great Britain duly authorized to make the restoration, to an agent on the part of the United States duly authorized to receive it. Nor does it deny that, in virtue thereof, they have the right to be reinstated, and considered the party in possession while treating of the title, as was admitted by Lord Castlereagh in the negotiation of 1818; nor that the convention of 1818, signed a few days after the restoration, and that of 1827, which is still in force, have preserved and perpetuated, until now, all the rights they possessed to the territory at the time, including that of being reinstated and considered the party in possession while the question of title is depending, as is now the case. It is true, it attempts to weaken the effect of these implied admissions; in the first place, by designating positive treaty stipulations as "an understanding between the two governments;" but a change of phraseology cannot possibly transform treaty obligations into a mere understanding; and, in the next place, by stating that we have not, since the restoration of Astoria, actually occupied it; but that cannot possibly affect our right to be

reinstated, and to be considered in possession, secured to us by the treaty of Ghent, implied in the act of restoration, and since preserved by positive treaty stipulations. Nor can the remarks of the counter statement in reference to Lord Castlereagh's admission weaken our right of possession, secured by the treaty, and its formal and unconditional restoration, by duly authorized agents. It is on these, and not on the denial of the authenticity of Lord Castlereagh's despatch, that the United States rest their right of possession, whatever verbal communication the British minister may have made at the time to our Secretary of State; and it is on these that they may safely rest it, setting aside altogether the admission of Lord Castlereagh.

The next claims on which our title to the territory rests are those derived from Spain, by the treaty ceding Louisiana to the United States, including those she derived from Great Britain by the treaty of 1763. It established the Mississippi as "the irrevocable boundary between the territories of France and Great Britain;" and thereby the latter surrendered to France all her claims on this continent, west of that river; including, of course, all within the chartered limits of her then colonies, which extended to the Pacific ocean. On these, united with those of France as the possessor of Louisiana, we rest our claim of continuity, as extending to that ocean, without an opposing claim, except that of Spain, which we have since acquired, and consequently removed, by the treaty of Florida.

The existence of these claims the counter statement denies, on the authority of Mr. Jefferson; but, as it appears to the undersigned, without adequate reasons. He does not understand Mr. Jefferson as denying that the United States acquired any claim to the Oregon territory by the acquisition of Louisiana, either in his letter of 1803, referred to by the counter statement, and from which it gives an extract, or in the document of 1807, to which it also refers. It is manifest, from the extract itself, that the object of Mr. Jefferson was, not to state the extent of the claims acquired with Louisiana, but simply to state how far its unquestioned boundaries extended; and these he limited westwardly by the Rocky mountains. It is, in like manner, manifest from the document, as cited by the counter statement, that his object was not to deny that our claims extended to the territory, but simply to express his opinion of the impolicy, in the then state of our relations with Spain, of bringing them forward. This, so far from denying that we had claims, admits them by the clearest implication. If, indeed, in either case, his opinion had been equivocally expressed, the prompt measures adopted by him to explore the territory after the treaty was negotiated, but before it was ratified, clearly show that it was his opinion not only that we had acquired claims to it, but highly important claims, which deserved prompt attention.

In addition to this denial of our claims to the territory on the authority of Mr. Jefferson, which the evidence relied on does not seem to sustain, the counter statement intimates an objection to continuity as the foundation of a right on the ground that it may more properly be considered (to use its own words) as demonstrating the greater degree of interest which the United States possessed by reason of contiguity in acquiring territory in a westward direction. Contiguity may, indeed, be regarded as one of the elements constituting the right of continuity—which is more comprehensive—and is necessarily associated with the right of occupancy, as has been shown in statement A. It also shows, that the laws which usage has established in the application of the right to this continent, give to the European settlements on its eastern coasts an indefinite extension westward.

It is now too late for Great Britain to deny a right on which she has acted so long, and by which she has profited so much; or to regard it as a mere facility, not affecting in any way the question of right. On what other right has she extended her claims westwardly to the Pacific ocean from her settlements around Hudson's Bay? or expelled France from the east side of the Mississippi in the war which terminated in 1763?

As to the assumption of the counter statement, that Louisiana, while in the possession of Spain, became subject to the Nootka Sound convention, which, it is alleged, abrogated all the claims of Spain to the territory, including those acquired with Louisiana, it will be time enough to consider it after it shall be attempted to be shown that such, in reality, was the effect. In the mean time, the United States must continue to believe that they acquired from France, by the treaty of Louisiana, important and substantial claims to the territory.

The undersigned cannot assent to the conclusion to which, on a review of the whole ground, the counter statement arrives—that the present state of the question is, that Great Britain possesses and exercises, in common with the United States, a right of joint occupancy in the Oregon territory, of which she can be divested only by an equitable partition of the whole between the two powers. He claims, and he thinks he has shown, a clear title on the part of the United States, to the whole region drained by the Columbia, with the right of being reinstated, and considered the party in possession, while treating of the title; in which character he must insist on their being considered in conformity with positive treaty stipulations. He cannot, therefore, consent that they shall be regarded, during the negotiation, merely as occupants in common with Great Britain. Nor can he, while thus regarding their rights, present a counter proposal, based on the supposition of a joint occupancy merely, until the question of title to the territory is fully discussed. It is, in his opinion, only after such a discussion, which shall fully present the titles of the parties respectively to the territory, that their claims to it can be fairly and satisfactorily adjusted. The United States desire only what they may deem themselves justly entitled to; and are unwilling to take less. With their present opinion of their title, the British plenipotentiary must see that the proposal which he made at the second conference, and which he more fully sets forth in his counter statement, falls far short of what they believe themselves justly entitled to.

In reply to the request of the British plenipotentiary, that the undersigned should define the nature and extent of the claims which the United States have to the other portions of the territory, and to which allusion is made in the concluding part of statement A, he has the honor to inform him, in general terms, that they are derived from Spain by the Florida treaty, and are founded on the discoveries and exploration of her navigators; and which they must regard as giving them a right to the extent to which they can be established, unless a better can be opposed.

J. C. CALHOUN.

The Right Hon. RICHARD PAKENHAM, *&c. &c. &c.*

Mr. Pakenham to Mr. Calhoun.

WASHINGTON, *January* 15, 1845.

SIR: I did not fail to communicate to her majesty's government all that

had passed between us, with reference to the question of the Oregon boundary, up to the end of last September, as detailed in the written statements interchanged by us, and in the protocols of our conferences.

Those papers remain under the consideration of her majesty's government; and I have reason to believe that, at no distant period, I shall be put in possession of the views of her majesty's government on the several points which became most prominent in the course of the discussion.

But considering on the one hand the impatience which is manifested in the United States for a settlement of this question, and on the other the length of time which would probably be still required to effect a satisfactory adjustment of it between the two governments, it has occurred to her majesty's government that, under such circumstances, no more fair or honorable mode of settling the question could be adopted than that of arbitration.

This proposition I am accordingly authorized to offer for the consideration of the government of the United States; and, under the supposition that it may be found acceptable, further to suggest that the consent of both parties to such a course of proceeding being recorded by an interchange of notes, the choice of an arbiter, and the mode in which their respective cases shall be laid before him, may hereafter be made the subject of a more formal agreement between the two governments.

I have the honor to be, with high consideration, sir, your obedient servant,

R. PAKENHAM.

Hon. JOHN C. CALHOUN, *&c. &c. &c.*

Mr. Calhoun to Mr. Pakenham.

DEPARTMENT OF STATE,
Washington, January 21, 1845.

SIR: I have laid before the President your communication of the 15th instant, offering, on the part of her majesty's government, to submit the settlement of the question between the two countries in reference to the Oregon territory to arbitration.

The President instructs me to inform you that, while he unites with her majesty's government in the desire to see the question settled as early as may be practicable, he cannot accede to the offer.

Waiving all other reasons for declining it, it is sufficient to state that he continues to entertain the hope that the question may be settled by the negotiation now pending between the two countries; and that he is of the opinion it would be unadvisable to entertain a proposal to resort to any other mode, so long as there is hope of arriving at a satisfactory settlement by negotiation, and especially to one which might rather retard than expedite its final adjustment.

I avail myself of this occasion to renew to you the assurance of my distinguished consideration.

J. C. CALHOUN.

Rt. Hon. R. PAKENHAM, *&c. &c. &c.*

J. B.

DEPARTMENT OF STATE,
Washington, July 12, 1845.

The undersigned, Secretary of State of the United States, now proceeds to resume the negotiation on the Oregon question, at the point where it was left by his predecessor.

The British plenipotentiary, in his note to Mr. Calhoun of the 12th September last, requests "that as the American plenipotentiary declines the proposal offered on the part of Great Britain, he will have the goodness to state what arrangement he is, on the part of the United States, prepared to propose for an equitable adjustment of the question; and more especially that he will have the goodness to define the nature and extent of the claims which the United States may have to other portions of the territory to which allusion is made in the concluding part of his statement, as it is obvious that no arrangement can be made with respect to a part of the territory in dispute while a claim is reserved to any portion of the remainder."

The Secretary of State will now proceed, (reversing the order in which these requests have been made,) in the first place, to present the title of the United States to the territory north of the valley of the Columbia, and will then propose, on the part of the President, the terms upon which, in his opinion, this long pending controversy may be justly and equitably terminated between the parties.

The title of the United States to that portion of the Oregon territory between the valley of the Columbia and the Russian line in 54° 40′ north latitude is recorded in the Florida treaty. Under this treaty, dated on the 22d February, 1819, Spain ceded to the United States all her "rights, claims, and pretensions," to any territories west of the Rocky mountains and north of the 42d parallel of latitude. We contend that at the date of this cession Spain had a good title, as against Great Britain, to the whole Oregon territory; and, if this be established, the question is then decided in favor of the United States.

But the American title is now encountered at every step by declarations that we hold it subject to all the conditions of the Nootka Sound convention between Great Britain and Spain, signed at the Escurial on the 28th of October, 1790. Great Britain contends that under this convention the title of Spain was limited to a mere common right of joint occupancy with herself over the whole territory. To employ the language of the British plenipotentiary, "If Spain could not make good her own right of exclusive dominion over those regions, still less could she confer such a right on another power; and hence Great Britain argues that from nothing deduced from the treaty of 1819 can the United States assert a valid claim to exclusive dominion over any part of the Oregon territory." Hence it is that Great Britain, resting her pretensions on the Nootka Sound convention, has necessarily limited her claim to a mere right of joint occupancy over the whole territory in common with the United States as the successor of Spain, leaving the right of exclusive dominion in abeyance.

It is, then, of the first importance that we should ascertain the true construction and meaning of the Nootka Sound convention.

If it should appear that this treaty was transient in its very nature; that it conferred upon Great Britain no right but that of merely trading with the Indians whilst the country should remain unsettled, and making the

necessary establishments for this purpose; that it did not interfere with the ultimate sovereignty of Spain over the territory; and, above all, that it was annulled by the war between Spain and Great Britain in 1796, and has never since been renewed by the parties, then the British claim to any portion of this territory will prove to be destitute of foundation.

It is unnecessary to detail the circumstances out of which this convention arose. It is sufficient to say that John Meares, a British subject, sailing under the Portuguese flag, landed at Nootka Sound in 1788, and made a temporary establishment there for the purpose of building a vessel; and that the Spaniards, in 1789, took possession of this establishment under the orders of the Vice Roy of Mexico, who claimed for Spain the exclusive sovereignty of the whole territory on the northwest coast of America up to the Russian line. Meares appealed to the British government for redress against Spain, and the danger of war between the two nations became imminent. This was prevented by the conclusion of the Nootka Sound convention. That convention provides, by its first and second articles, for the restoration of the lands and buildings of which the subjects of Great Britain had been dispossessed by the Spaniards, and the payment of an indemnity for the injuries sustained. This indemnity was paid by Spain; but no sufficient evidence has been adduced, that either Nootka Sound, or any other spot upon the coast, was ever actually surrendered by that power to Great Britain. All we know with certainty is, that Spain continued in possession of Nootka Sound until 1795, when she voluntarily abandoned the place. Since that period no attempt has been made (unless very recently) by Great Britain, or her subjects, to occupy either this or any other part of Vancouver's island. It is thus manifest, that she did not formerly attach much importance to the exercise of the rights, whatever they may have been, which she had acquired under the Nootka Sound convention.

The only other portion of this convention important for the present discussion, will be found in the third and the fifth articles. They are as follows:

"ART. 3. In order to strengthen the bonds of friendship, and to preserve in future a perfect harmony and good understanding between the two contracting parties, it is agreed that their respective subjects shall not be disturbed or molested either in navigating or carrying on their fisheries in the Pacific ocean or in the South seas, or in landing on the coasts of those seas in places not already occupied, for the purpose of carrying on their commerce with the natives of the country, or of making settlements there; the whole subject, nevertheless, to the restrictions specified in the three following articles." The material one of which is,

"ART. 5. As well in the places which are to be restored to the British subjects, by virtue of the first article, as in all other parts of the northwestern coasts of North America, or of the islands adjacent, situate to the north of the parts of the said coast already occupied by Spain, wherever the subjects of either of the two powers shall have made settlements since the month of April, 1789, or shall hereafter make any, the subjects of the other shall have free access, and shall carry on their trade without any disturbance or molestation."

It may be observed as a striking fact, which must have an important bearing against the claim of Great Britain, that this convention, which was dictated by her to Spain, contains no provision impairing the ultimate sov-

ereignty which that power had asserted for nearly three centuries over the whole western side of North America as far north as the 61st degree of latitude, and which had never been seriously questioned by any European nation. This right had been maintained by Spain with the most vigilant jealousy ever since the discovery of the American continent, and had been acquiesced in by all European governments. It had been admitted even beyond the latitude of 54° 40′ north by Russia, then the only power having claims which could come in collision with Spain; and that, too, under a sovereign peculiarly tenacious of the territorial rights of her empire. This will appear from the letter of Count de Fernan Nuñez, the Spanish ambassador at Paris, to M. de Montmorin, the Secretary of the Foreign Department of France, dated Paris, June 16, 1790. From this letter it seems that complaints had been made by Spain to the court of Russia, against Russian subjects, for violating the Spanish territory on the northwest coast of America, south of the 61st degree of north latitude; in consequence of which that court, without delay, assured the King of Spain "that it was extremely sorry that the repeated orders issued to prevent the subjects of Russia from violating, in the smallest degree, the territory belonging to another power, should have been disobeyed."

This convention of 1790 recognises no right in Great Britain, either present or prospective, to plant permanent colonies on the northwest coast of America, or to exercise such exclusive jurisdiction over any portion of it as is essential to sovereignty. Great Britain obtained from Spain all she then desired,—a mere engagement that her subjects should "not be disturbed or molested" "in landing on the coasts of those seas, in places not already occupied, for the purpose of carrying on their commerce with the natives of the country, or of making settlements there." What kind of "settlements?" This is not specified; but surely their character and duration are limited by the object which the contracting parties had in view. They must have been such only as were necessary and proper "for the purpose of carrying on commerce with the natives of the country." Were these settlements intended to expand into colonies; to expel the natives; to deprive Spain of her sovereign rights, and to confer the exclusive jurisdiction over the whole territory on Great Britain? Surely Spain never designed any such results; and if Great Britain has obtained these concessions by the Nootka Sound convention, it has been by the most extraordinary construction ever imposed upon human language. But this convention also stipulates that to these settlements, which might be made by the one party, "the subjects of the other shall have free access, and shall carry on their trade without any disturbance or molestation." What trade? Certainly that "with the natives of the country," as prescribed in the third article; and this, from the very nature of things, could continue only whilst the country should remain in the possession of the Indians. On no other construction can this convention escape from the absurdities attributed to it by British statesmen, when under discussion before the House of Commons. "In every place in which we might settle, (said Mr., afterwards Earl Grey,) access was left for the Spaniards. Where we might form a settlement on one hill, they might erect a fort on another; and a merchant must run all the risks of a discovery, and all the expenses of an establishment, for a property which was liable to be the subject of continued dispute, and could never be placed upon a permanent footing."

Most certainly this treaty was in its very nature temporary, and the rights

of Great Britain under it were never intended to "be placed upon a permanent footing." It was to endure no longer than the existence of those peculiar causes which called it into being. Such a treaty, creating British and Spanish settlements intermingled with each other, and dotted over the whole surface of the territory, wherever a British or Spanish merchant could find a spot favorable for trade with the Indians, never could have been intended for a permanent arrangement between civilized nations.

But, whatever may be the true construction of the Nootka Sound convention, it has, in the opinion of the undersigned, long since ceased to exist.

The general rule of national law is, that war terminates all subsisting treaties between the belligerant powers. Great Britain has maintained this rule to its utmost extent. Lord Bathurst, in negotiating with Mr. Adams, in 1815, says "that Great Britain knows of no exception to the rule that all treaties are put an end to by a subsequent war between the same parties." Perhaps the only exception to this rule, if such it may be styled, is that of a treaty recognising certain sovereign rights as belonging to a nation which had previously existed independently of any treaty engagement. These rights, which the treaty did not create, but merely acknowledged, cannot be destroyed by war between the parties. Such was the acknowledgment of the fact by Great Britain, under the definitive treaty of 1783, that the United States were "free, sovereign, and independent." It will scarcely be contended that the Nootka Sound convention belongs to this class of treaties. It is difficult to imagine any case in which a treaty containing mutual engagements, still remaining unexecuted, would not be abrogated by war. The Nootka Sound convention is strictly of this character. The declaration of war, therefore, by Spain against Great Britain, in October, 1796, annulled its provisions and freed the parties from its obligations. This whole treaty consisted of mutual express engagements to be performed by the contracting parties. Its most important article (the third) in referenee to the present discussion, does not even grant, in affirmative terms, the right to the contracting parties to trade with the Indians and to make settlements. It merely engages, in negative terms, that the subjects of the contracting parties "shall not be disturbed or molested" in the exercise of these treaty privileges. Surely this is not such an engagement as will continue to exist in despite of war between the parties. It is gone forever, unless it has been revived in express terms by the treaty of peace, or some other treaty between the parties. Such is the principle of public law, and the practice of civilized nations.

Has the Nootka Sound convention been thus revived? This depends entirely upon the true construction of the additional articles to the treaty of Madrid, which were signed on the 28th of August, 1814, and contain the only agreement between the parties, since the war of 1796, for the renewal of engagements existing previously to the latter date. The first of the additional articles to this treaty provides as follows: "It is agreed that pending the negotiation of a new treaty of commerce, Great Britain shall be admitted to trade with Spain upon the same conditions as those which existed previously to 1796; all the treaties of commerce which at that period subsisted between the two nations being hereby ratified and confirmed."

The first observation to be made upon this article, is, that it is confined in terms to the trade with Spain, and does not embrace her colonies or remote territories. These had always been closed against foreign powers. Spain had never conceded the privilege of trading with her colonies to any

nation, except in the single instance of the Asiento, which was abrogated in 1740, nor did any of the treaties of commerce which were in force between the two nations previously to 1796 make such a concession to Great Britain. That this is the true construction of the first additional article of the treaty of Madrid appears conclusively from another part of the instrument. Great Britain, by an irresistible inference, admitted that she had acquired no right under it to trade with the colonies or remote territories of Spain, when she obtained a stipulation in the same treaty, that "in the event of the commerce of the Spanish American possessions being opened to foreign nations, his Catholic majesty promises that Great Britain shall be admitted to trade with those possessions as the most favored nation."

But even if the first additional article of the treaty of 1814 were not thus expressly limited to the revival of the trade of Great Britain with the kingdom of Spain in Europe, without reference to any other portion of her dominions, the Nootka Sound convention can never be embraced under the denomination of a treaty of commerce between the two powers. It contains no provision whatever to grant or to regulate trade between British and Spanish subjects. Its essential part, so far as concerns the present question, relates not to any trade or commerce between the subjects of the respective powers. It merely prohibits the subjects of either from disturbing or molesting those of the other in trading with third parties—the natives of the country. The grant "of making settlements," whether understood in its broadest or most restricted sense, relates to territorial acquisition, and not to trade or commerce in any imaginable form. The Nootka Sound convention, then, cannot, in any sense, be considered a treaty of commerce; and was not, therefore, revived by the treaty of Madrid of 1814. When the war commenced between Great Britain and Spain, in 1796, several treaties subsisted between them, which were, both in title and in substance, treaties of commerce. These, and these alone, were revived by the treaty of 1814.

That the British government itself had no idea, in 1818, that the Nootka Sound convention was then in force, may be fairly inferred from their silence upon the subject during the whole negotiation of that year on the Oregon question. This convention was not once referred to by the British plenipotentiaries. They then rested their claims upon other foundations. Surely that which is now their main reliance would not have escaped the observation of such statesmen, had they then supposed it was in existence.

In view of all these considerations, the undersigned respectfully submits that, if Great Britain has valid claims to any portion of the Oregon territory, they must rest upon a better foundation than that of the Nootka Sound convention.

It is far from the intention of the undersigned to repeat the argument by which his predecessor (Mr. Calhoun) has demonstrated the American title "to the entire region drained by the Columbia river and its branches." He has shown that to the United States belongs the discovery of the Columbia river, and that Captain Gray was the first civilized man who ever entered its mouth, and sailed up its channel, baptising the river itself with the name of his vessel; that MM. Lewis and Clarke, under a commission from their government, first explored the waters of this river almost from its head springs to the Pacific, passing the winter of 1805-'6 on its northern shore near the ocean; that the first settlement upon this river was made by a citizen of the United States at Astoria; and that the British government solemnly recognised our right to the possession of this settlement, which had been cap-

tured during the war, by surrendering it up to the United States on the 6th day of October, 1818, in obedience to the treaty of Ghent. If the discovery of the mouth of a river, followed up within a reasonable time by the first exploration both of its main channel and its branches, and appropriated by the first settlements on its banks, do not constitute a title to the territory drained by its waters in the nation performing these acts, then the principles consecrated by the practice of civilized nations ever since the discovery of the New World, must have lost their force. These principles were necessary to preserve the peace of the world. Had they not been enforced in practice, clashing claims to newly discovered territory, and perpetual strife among the nations, would have been the inevitable result.

The title of the United States to the entire region drained by the Columbia river and its branches was perfect and complete before the date of the treaties of joint occupation of October, 1818, and August, 1827; and under the express provisions of these treaties, this title, whilst they endure, can never be impaired by any act of the British government. In the strong language of the treaty of August, 1827, "nothing contained in this convention, or in the third article of the convention of October, 1818, hereby continued in force, shall be construed to impair, or in any manner affect, the claims which either of the contracting parties may have to any part of the country westward of the Stony or Rocky mountains." Had not the convention contained this plain provision, which has prevented the respective parties from looking with jealousy on the occupation of portions of the territory by the citizens and subjects of each other, its chief object, which was to preserve peace and prevent collisions in those distant regions, would have been entirely defeated. It is then manifest, that neither the grant of this territory for a term of years, made by Great Britain to the Hudson Bay company in December, 1821, nor the extension of this grant in 1838, nor the settlements, trading posts and forts which have been established by that company under it, can in the slightest degree strengthen the British or impair the American title to any portion of the Oregon territory. The British claim is neither better nor worse than it was on the 20th October, 1818, the date of the first convention.

The title of the United States to the valley of the Columbia is older than the Florida treaty of February, 1819, under which the United States acquired all the rights of Spain to the northwest coast of America, and exists independently of its provisions. Even supposing, then, that the British construction of the Nootka Sound convention were correct, it could not apply to this portion of the territory in dispute. A convention between Great Britain and Spain, originating from a dispute concerning a petty trading establishment at Nootka Sound, could not abridge the rights of other nations. Both in public and private law, an agreement between two parties can never bind a third, without his consent, express or implied.

The extraordinary proposition will scarcely be again urged, that our acquisition of the rights of Spain under the Florida treaty can in any manner weaken or impair our pre-existing title. It may often become expedient for nations, as it is for individuals, to purchase an outstanding title merely for the sake of peace; and it has never heretofore been imagined that the acquisition of such a new title rendered the old one less valid. Under this principle, a party having two titles would be confined to his worst, and would forfeit his best. Our acquisition of the rights of Spain, then, under the Florida treaty, whilst it cannot affect the prior title of the United States to the valley of the Columbia, has rendered it more clear and

unquestionable before the world. We have a perfect right to claim under both these titles; and the Spanish title alone, even if it were necessary to confine ourselves to it, would, in the opinion of the President, be good, as against Great Britain, not merely to the valley of the Columbia, but the whole territory of Oregon.

Our own American title to the extent of the valley of the Columbia, resting as it does on discovery, exploration, and possession, (a possession acknowledged by a most solemn act of the British government itself,) is a sufficient assurance against all mankind, whilst our superadded title derived from Spain extends our exclusive rights over the whole territory in dispute, as against Great Britain.

Such being the opinion of the President in regard to the title of the United States, he would not have consented to yield any portion of the Oregon territory, had he not found himself embarrassed, if not committed, by the acts of his predecessors. They had uniformly proceeded upon the principle of compromise in all their negotiations. Indeed, the first question presented to him after entering upon the duties of his office, was, whether he should abruptly terminate the negotiation which had been commenced and conducted between Mr. Calhoun and Mr. Pakenham on the principle avowed in the first protocol, not of contending for the whole territory in dispute, but of treating of the respective claims of the parties, "with the view to establish a permanent boundary between the two countries westward of the Rocky mountains."

In view of these facts, the President has determined to pursue the present negotiation, to its conclusion, upon the principle of compromise in which it commenced, and to make one more effort to adjust this long pending controversy. In this determination he trusts that the British government will recognise his sincere and anxious desire to cultivate the most friendly relations between the two countries, and to manifest to the world that he is actuated by a spirit of moderation. He has, therefore, instructed the undersigned again to propose to the government of Great Britain, that the Oregon territory shall be divided between the two countries by the forty-ninth parallel of north latitude, from the Rocky mountains to the Pacific ocean; offering at the same time to make free to Great Britain, any port or ports on Vancouver's island, south of this parallel, which the British government may desire. He trusts that Great Britain may receive this proposition in the friendly spirit by which it was dictated, and that it may prove the stable foundation of lasting peace and harmony between the two countries. The line proposed will carry out the principle of continuity equally for both parties, by extending the limits both of ancient Louisiana and Canada to the Pacific along the same parallel of latitude which divides them east of the Rocky mountains; and it will secure to each a sufficient number of commodious harbors on the northwest coast of America.

The undersigned avails himself of this occasion to renew to Mr. Pakenham the assurance of his distinguished consideration.

JAMES BUCHANAN.

Rt. Hon. R. PAKENHAM, *&c. &c. &c.*

R. P.

WASHINGTON, *July* 29, 1845.

Notwithstanding the prolix discussion which the subject has already undergone, the undersigned, her Britannic majesty's envoy extraordinary and minister plenipotentiary, feels obliged to place on record a few observations in reply to the statement, marked J. B, which he had the honor to receive, on the 16th of this month, from the hands of the Secretary of State of the United States, terminating with a proposition on the part of the United States for the settlement of the Oregon question.

In this paper it is stated that "the title of the United States to that portion of the Oregon Territory between the valley of the Columbia and the Russian line, in 54° 40′ north latitude, is recorded in the Florida treaty. Under this treaty, dated on 22d February, 1819, Spain ceded to the United States all her rights, claims, and pretensions to any territories west of the Rocky mountains and north of the 42d parallel of latitude. We contend," says the Secretary of State, "that at the date of this convention, Spain had a good title, as against Great Britain, to the whole Oregon territory; and, if this be established, the question is then decided in favor of the United States," the convention between Great Britain and Spain, signed at the Escurial on the 28th October, 1790, notwithstanding.

"If," says the American plenipotentiary, "it should appear that this treaty was transient in its very nature; that it conferred upon Great Britain no right but that of merely trading with the Indians, whilst the country should remain unsettled, and making the necessary establishments for this purpose; that it did not interfere with the ultimate sovereignty of Spain over the territory; and, above all, that it was annulled by the war between Spain and Great Britain, in 1796, and has never since been renewed by the parties—then the British claim to any portion of the territory will prove to be destitute of foundation."

The undersigned will endeavor to show, not only that when Spain concluded with the United States the treaty of 1819, commonly called the Florida treaty, the convention concluded between the former power and Great Britain in 1790, was considered by the parties to it to be still in force, but even that if no such treaty had ever existed, Great Britain would stand, with reference to a claim to the Oregon territory, in a position at least as favorable as the United States.

The treaty of 1790 is not appealed to by the British government, as the American plenipotentiary seems to suppose, as their "main reliance" in the present discussion. It is appealed to to show, that, by the treaty of 1819, by which "Spain ceded to the United States all her rights, claims, and pretensions to any territories west of the Rocky mountains and north of the 42d parallel of latitude," the United States acquired no right to exclusive dominion over any part of the Oregon territory.

The treaty of 1790 embraced, in fact, a variety of objects. It partook, in some of its stipulations, of the nature of a commercial convention: in other respects, it must be considered as an acknowledgment of existing rights—an admission of certain principles of international law not to be revoked at the pleasure of either party, or to be set aside by a cessation of friendly relations between them.

Viewed in the former light, its stipulations might have been considered as cancelled in consequence of the war which subsequently took place be-

tween the contracting parties, were it not, that, by the treaty concluded at Madrid on 28th August, 1814, it was declared that all the treaties of commerce which subsisted between the two nations (Great Britain and Spain) in 1796 were thereby ratified and confirmed.

In the latter point of view, the restoration of a state of peace was of itself sufficient to restore the admissions contained in the convention of 1790 to their full original force and vigor.

There are, besides, very positive reasons for concluding that Spain did not consider the stipulations of the Nootka convention to have been revoked by the war of 1796, so as to require, in order to be binding on her, that they should have been expressly revived or renewed, on the restoration of peace between the two countries. Had Spain considered that convention to have been annulled by the war—in other words, had she considered herself restored to her former position and pretensions with respect to exclusive dominion over the unoccupied parts of the North American continent—it is not to be imagined that she would have passively submitted to see the contending claims of Great Britain and the United States to a portion of that territory, the subject of negotiation and formal diplomatic transactions between those two nations.

It is, on the contrary, from her silence with respect to the continued occupation by the British of their settlements in the Columbia territory, subsequently to the convention of 1814, and when as yet there had been no transfer of her rights, claims, or pretensions to the United States, and from her silence also while important negotiations respecting the Columbia territory, incompatible altogether with her ancient claim to exclusive dominion, were in progress between Great Britain and the United States, fairly to be inferred that Spain considered the stipulations of the Nootka convention, and the principles therein laid down, to be still in force.

But the American plenipotentiary goes so far as to say that the British government itself had no idea, in 1818, that the Nootka Sound convention was then in force, because no reference was made to it on the part of England during the negotiation of that year on the Oregon question.

In reply to this argument, it will be sufficient for the undersigned to remind the American plenipotentiary that in the year 1818 no claim, as derived from Spain, was or could be put forth by the United States, seeing that it was not until the following year (the year 1819) that the treaty was concluded by which Spain transferred to the United States her rights, claims, and pretensions to any territories west of the Rocky mountains and north of the 42d parallel of latitude.

Hence it is obvious that in the year 1818 no occasion had arisen for appealing to the qualified nature of the rights, claims, and pretensions so transferred—a qualification imposed, or at least recognised, by the convention of Nootka.

The title of the United States to the valley of the Columbia, the American plenipotentiary observes, is older than the Florida treaty of February, 1819, and exists independently of its provisions. Even supposing, then, that the British construction of the Nootka Sound convention was correct, it could not apply to this portion of the territory in dispute.

The undersigned must be permitted respectfully to inquire upon what principle, unless it be upon the principle which forms the foundation of the Nootka convention, could the United States have acquired a title to any

part of the Oregon territory previously to the treaty of 1819, and independently of its provisions?

By discovery, exploration, settlement, will be the answer.

But, says the American plenipotentiary in another part of his statement, the rights of Spain to the west coast of America, as far north as the 61st degree of latitude, were so complete as never to have been seriously questioned by any European nation.

They had been maintained by Spain with the most vigilant jealousy ever since the discovery of the American continent, and had been acquiesced in by all European powers. They had been admitted even by Russia; and that, too, under a sovereign peculiarly tenacious of the territorial rights of her empire, who, when complaints had been made to the court of Russia against Russian subjects, for violating the Spanish territory on the north-west coast of America, did not hesitate to assure the king of Spain that she was extremely sorry that the repeated orders, issued to prevent the subjects of Russia from violating in the smallest degree the territory belonging to another power, should have been disobeyed.

In what did this alleged violation of territory consist? Assuredly in some attempted acts of discovery, exploration, or settlement.

At that time Russia stood in precisely the same position with reference to the exclusive rights of Spain as the United States; and any acts in contravention of those rights, whether emanating from Russia or from the United States, would necessarily be judged by one and the same rule.

How, then, can it be pretended that acts which, in the case of Russia, were considered as criminal violation of the Spanish territory, should, in the case of citizens of the United States, be appealed to as constituting a valid title to the territory affected by them? And yet, from this inconsistency the American plenipotentiary cannot escape, if he persists in considering the American title to have been perfected by discovery, exploration, and settlement, when as yet Spain had made no transfer of her rights, if, to use his own words, "that title is older than the Florida treaty, and exists independently of its provisions."

According to the doctrine of exclusive dominion, the exploration of Lewis and Clarke, and the establishment founded at the mouth of the Columbia, must be condemned as encroachments on the territorial rights of Spain.

According to the opposite principle, by which discovery, exploration, and settlement are considered as giving a valid claim to territory, those very acts are referred to, in the course of the same paper, as constituting a complete title in favor of the United States.

Besides, how shall we reconcile this high estimation of the territorial rights of Spain, considered independently of the Nootka Sound convention, with the course observed by the United States in their diplomatic transactions with Great Britain, previously to the conclusion of the Florida treaty? The claim advanced for the restitution of Fort George, under the first article of the treaty of Ghent, the arrangement concluded for the joint occupation of the Oregon territory by Great Britain and the United States, and, above all, the proposal actually made on the part of the United States for a partition of the Oregon territory—all which transactions took place in the year 1818, when, as yet, Spain had made no transfer or cession of her rights—appear to be as little reconcilable with any regard for those rights while still vested in Spain, as the claim founded on discovery, exploration,

and settlement accomplished previously to the transfer of those rights to the United States.

Supposing the arrangement proposed in the year 1818, or any other arrangement, for the partition of the Oregon territory, to have been concluded in those days between Great Britain and this country, what would, in that case, have become of the exclusive rights of Spain?

There would have been no refuge for the United States but in an appeal to the principles of the Nootka convention.

To deny, then, the validity of the Nootka convention, is to proclaim the illegality of any title founded on discovery, exploration, or settlement previous to the conclusion of the Florida treaty.

To appeal to the Florida treaty as conveying to the United States any exclusive rights, is to attach a character of encroachment and of violation of the rights of Spain to every act to which the United States appealed in the negotiation of 1818, as giving them a claim to territory on the northwest coast.

These conclusions appear to the undersigned to be irresistible.

The United States can found no claim on discovery, exploration, and settlement effected previously to the Florida treaty, without admitting the principles of the Nootka convention, and the consequent validity of the parallel claims of Great Britain founded on like acts; nor can they appeal to any exclusive right as acquired by the Florida treaty, without upsetting all claims adduced in their own proper right, by reason of discovery, exploration, and settlement antecedent to that arrangement.

The undersigned trusts that he has now shown that the convention of 1790 (the Nootka Sound convention) has continued in full and complete force up to the present moment—

By reason, in the first place, of the commercial character of some of its provisions, as such expressly renewed by the convention of August, 1814, between Great Britain and Spain;—

By reason, in the next place, of the acquiescence of Spain in various transactions, to which it is not to be supposed that that power would have assented, had she not felt bound by the provisions of the convention in question;—

And, thirdly, by reason of repeated acts of the government of the United States, previous to the conclusion of the Florida treaty, manifesting adherence to the principles of the Nootka convention, or at least dissent from the exclusive pretensions of Spain.

Having thus replied—and he hopes satisfactorily—to the observations of the American plenipotentiary with respect to the effect of the Nootka Sound convention, and the Florida treaty, as bearing upon the subject of the present discussion, the undersigned must endeavor to show that even if the Nootka Sound convention had never existed, the position of Great Britain in regard to her claim, whether to the whole or to any particular portion of the Oregon territory, is at least as good as that of the United States.

This branch of the subject must be considered, first, with reference to principle—to the right of either party, Great Britain or the United States, to explore or make settlements in the Oregon territory without violation of the rights of Spain; and next, supposing the first to be decided affirmatively, with reference to the relative value and importance of the acts of discovery, exploration, and settlements effected by each.

As relates to the question of principle, the undersigned thinks he can furnish no better argument than that contained in the following words,

which he has already once quoted from the statement of the American plenipotentiary:

"The title of the United States to the valley of the Columbia is older than the Florida treaty of February, 1819, under which the United States acquired all the rights of Spain to the northwest coast of America, and exists independently of its provisions." And again, "the title of the United States to the entire region drained by the Columbia river and its branches was perfect and complete before the date of the treaties of joint occupancy of October, 1818, and August, 1827."

The title thus referred to must be that resting on discovery, exploration, and settlement.

If this title, then, is good, or rather was good, as against the exclusive pretensions of Spain, previously to the conclusion of the Florida treaty, so must the claims of Great Britain, resting on the same grounds, be good also.

Thus, then, it seems manifest that, with or without the aid of the Nootka Sound convention, the claims of Great Britain resting on discovery, exploration, and settlement, are, in point of principle, equally valid with those of the United States.

Let us now see how the comparison will stand when tried by the relative value, importance, and authenticity of each.

Rejecting previous discoveries north of the 43d parallel of latitude as not sufficiently authenticated, it will be seen, on the side of Great Britain, that in 1778 Captain Cook discovered Cape Flattery, the southern entrance of the Straits of Fuca. Cook must also be considered the discoverer of Nootka Sound, in consequence of the want of authenticity in the alleged previous discovery of that port by Perez.

In 1787, Captain Berkeley, a British subject, in a vessel under Austrian colors, discovered the Strait of Fuca.

In the same year, Captain Duncan, in the ship "Princess Royal," entered the straits and traded at the village of Classet.

In 1788, Meares, a British subject, formed the establishment at Nootka which gave rise to the memorable discussion with the Spanish government, ending in the recognition, by that power, of the right of Great Britain to form settlements in the unoccupied parts of the northwest portion of the American continent, and in an engagement, on the part of Spain, to reinstate Meares in the possession from which he had been ejected by the Spanish commanders.

In 1792, Vancouver, who had been sent from England to witness the fulfilment of the above mentioned engagement, and to effect a survey of the northwest coast, departing from Nootka Sound, entered the Straits of Fuca, and after an accurate survey of the coasts and inlets on both sides, discovered a passage northwards into the Pacific, by which he returned to Nootka, having thus circumnavigated the island which now bears his name. And here we have, as far as relates to Vancouver's island, as complete a case of discovery, exploration, and settlement, as can well be presented, giving to Great Britain, in any arrangement that may be made with regard to the territory in dispute, the strongest possible claim to the exclusive possession of that island.

While Vancouver was prosecuting discovery and exploration by sea, Sir Alexander Mackenzie, a partner in the Northwest Company, crossed the Rocky mountains, discovered the head waters of the river since called Frazer's river, and, following for some time the course of that river, effected a passage to the sea; being the first civilized man who traversed the continent

of America from sea to sea in those latitudes. On the return of Mackenzie to Canada, the Northwest Company established trading posts in the country to the westward of the Rocky mountains.

In 1806 and 1811, respectively, the same company established posts on the Tacoutché Tessé, and the Columbia.

In the year 1811, Thompson, the astronomer of the Northwest Company, discovered the northern head waters of the Columbia, and, following its course till joined by the rivers previously discovered by Lewis and Clarke, he continued his journey to the Pacific.

From that time until the year 1818, when the arrangement for the joint occupancy of the territory was concluded, the Northwest Company continued to extend their operations throughout the Oregon territory, and to "occupy," it may be said, as far as occupation can be effected in regions so inaccessible and destitute of resources.

While all this was passing, the following events occurred, which constitute the American claim in their own proper right.

In 1792 Gray entered the mouth of the Columbia river.

In 1805 Lewis and Clarke effected a passage across the Rocky mountains, and, discovering a branch of the Columbia river, followed it until they reached the ocean.

In 1811 the trading post or settlement of Astoria was established at the mouth of the Columbia, on the southern side of that river.

This post or settlement passed, during the last war, into British hands, by the voluntary act of the persons in charge of it—a fact most clearly established. It was restored to the United States in 1818, with certain well authenticated reservations; but it was never actually reoccupied by American citizens, having, from the moment of the original transfer or sale, continued to be occupied by British subjects.

These are the acts of discovery, exploration, and settlement referred to by the United States as giving them a claim to the valley of the Columbia, in their own proper right.

The British government are disposed to view them in the most liberal sense, and to give to them the utmost value to which they can in fairness be entitled; but there are circumstances attending each and all of them which must, in the opinion of any impartial investigator of the subject, take from them a great deal of the effect which the American negotiators assign to them, as giving to this country a claim to the entire region drained by the Columbia and its branches.

In the first place, as relates to the discovery of Gray, it must be remarked that he was a private navigator, sailing principally for the purposes of trade; which fact establishes a wide difference, in a national point of view, between the discoveries accomplished by him and those effected by Cook and Vancouver, who sailed in ships of the royal navy of Great Britain, and who were sent to the northwest coast for the express purpose of exploration and discovery.

In the next place, it is a circumstance not to be lost sight of, that it was not for several years followed up by any act which could give it value in a national point of view; it was not in truth made known to the world, either by the discoverer himself or by his government. So recently as the year 1826, the American plenipotentiaries in London remarked, with great correctness, in one of their reports, that, "respecting the mouth of the Columbia river, we know nothing of Gray's discoveries but through British accounts."

In the next place, the connexion of Gray's discovery with that of Lewis and Clarke is interrupted by the intervening exploration of Lieutenant Broughton, of the British surveying ship "Chatham."

With respect to the expedition of Lewis and Clarke, it must, on a close examination of the route pursued by them, be confessed that neither on their outward journey to the Pacific, nor on their homeward journey to the United States, did they touch upon the head waters of the principal branch of the Columbia river, which lie far to the north of the parts of the country traversed and explored by them.

Thompson, of the British Northwest Company, was the first civilized person who navigated the northern (in reality the main) branch of the Columbia, or traversed any part of the country drained by it.

It was by a tributary of the Columbia that Lewis and Clarke made their way to the main stream of that river, which they reached at a point distant, it is believed, not more than two hundred miles from the point to which the river had already been explored by Broughton.

These facts, the undersigned conceives, will be found sufficient to reduce the value of Lewis and Clarke's exploration on the Columbia to limits which would by no means justify a claim to the whole valley drained by that river and its branches.

As to settlement, the qualified nature of the rights devolved to the United States by virtue of the restitution of Fort Astoria has already been pointed out.

It will thus be seen, the undersigned confidently believes, that, on the grounds of discovery, exploration, and settlement, Great Britain has nothing to fear from a comparison of her claims to the Oregon territory, taken as a whole, with those of the United States;—

That, reduced to the valley drained by the Columbia, the facts on which the United States rest their case are far from being of that complete and exclusive character which would justify a claim to the whole valley of the Columbia; and that, especially as relates to Vancouver's island, taken by itself, the preferable claim of Great Britain, in every point of view, seems to have been clearly demonstrated.

After this exposition of the views entertained by the British government respecting the relative value and importance of the British and American claims, the American plenipotentiary will not be surprised to hear that the undersigned does not feel at liberty to accept the proposal offered by the American plenipotentiary for the settlement of the question.

This proposal, in fact, offers less than that tendered by the American plenipotentiaries in the negotiation of 1826, and declined by the British government.

On that occasion it was proposed that the navigation of the Columbia should be made free to both parties.

On this, nothing is said in the proposal to which the undersigned has now the honor to reply; while, with respect to the proposed freedom of the ports on Vancouver's island, south of latitude 49°, the facts which have been appealed to in this paper, as giving to Great Britain the strongest claim to the possession of the whole island, would seem to deprive such a proposal of any value.

The undersigned, therefore, trusts that the American plenipotentiary will be prepared to offer some further proposal for the settlement of the Oregon question more consistent with fairness and equity, and with the reasonable

expectations of the British government, as defined in the statement marked D, which the undersigned had the honor to present to the American plenipotentiary at the early part of the present negotiation.

The undersigned, British plenipotentiary, has the honor to renew to the honorable James Buchanan, Secretary of State and plenipotentiary of the United States, the assurance of his high consideration.

R. PAKENHAM.

Hon. JAMES BUCHANAN,
&c. &c. &c.

J. B. 2.

DEPARTMENT OF STATE,
Washington, August 30, 1845.

The undersigned, Secretary of State of the United States, deems it his duty to make some observations in reply to the statement of her Britannic majesty's envoy extraordinary and minister plenipotentiary, marked R. P., and dated 29th July, 1845.

Preliminary to the discussion, it is necessary to fix our attention upon the precise question under consideration, in the present stage of the negotiation. This question simply is, were the titles of Spain and the United States, when united by the Florida treaty on the 22d of February, 1819, good, as against Great Britain, to the Oregon territory as far north as the Russian line, in the latitude of 54° 40'? If they were, it will be admitted that this whole territory now belongs to the United States.

The undersigned again remarks, that it is not his purpose to repeat the argument by which his predecessor, Mr. Calhoun, has demonstrated the American title "to the entire region drained by the Columbia river and its branches." He will not thus impair its force.

It is contended, on the part of Great Britain, that the United States acquired and hold the Spanish title, subject to the terms and conditions of the Nootka Sound convention, concluded between Great Britain and Spain, at the Escurial, on the 28th October, 1790.

In opposition to the argument of the undersigned, contained in his statement marked J. B., maintaining that this convention had been annulled by the war between Spain and Great Britain in 1796, and has never since been revived by the parties, the British plenipotentiary, in his statement marked R. P., has taken the following positions:

1. "That when Spain concluded with the United States the treaty of 1819, commonly called the Florida treaty, the convention concluded between the former power and Great Britain in 1790 was considered by the parties to it to be still in force." And,

2. "But that even if no such treaty had ever existed, Great Britain would stand, with reference to a claim to the Oregon territory, in a position at least as favorable as the United States."

The undersigned will follow, step by step, the argument of the British plenipotentiary in support of these propositions.

The British plenipotentiary states, that "the treaty of 1790 is not appealed to by the British government, as the American plenipotentiary seems to suppose, as their 'main reliance' in the present discussion," but to show

that by the Florida treaty of 1819, the United States acquired no right to exclusive dominion over any part of the Oregon territory.

The undersigned had believed that ever since 1826 the Nootka convention has been regarded by the British government as their main, if not their only reliance. The very nature and peculiarity of their claim identified it with the construction which they have imposed upon this convention, and necessarily exclude every other basis of title. What, but to accord with this construction, could have caused Messrs. Huskisson and Addington, the British commissioners, in specifying their title, on the 16th December, 1826, to declare that "Great Britain claims no exclusive sovereignty over any portion of that territory: her present claim, not in respect to any part, but to the whole, is limited to a right of joint occupancy in common with other States, leaving the right of exclusive dominion in abeyance?" And again: "By that convention (of Nootka) it was agreed that all parts of the northwestern coast of America, not already occupied at that time by either of the contracting parties, should thenceforward be equally open to the subjects of both, for all purposes of commerce and settlement; the sovereignty remaining in abeyance." But on this subject we are not left to mere inferences, however clear. The British commissioners, in their statement from which the undersigned has just quoted, have virtually abandoned any other title which Great Britain may have previously asserted to the territory in dispute, and expressly declare, "that whatever that title may have been, however, either on the part of Great Britain or on the part of Spain, prior to the convention of 1790, *it was thenceforward no longer to be traced in vague narratives of discoveries, several of them admitted to be apocryphal, but in the text and stipulations of that convention itself.*" And again, in summing up their whole case, they say: "Admitting that the United States have acquired all the rights which Spain possessed up to the treaty of Florida, either in virtue of discovery, or, as is pretended, in right of Louisiana, Great Britain maintains that the nature and extent of these rights, as well as of the rights of Great Britain, are fixed and defined by the convention of Nootka," &c. &c. &c.

The undersigned, after a careful examination, can discover nothing in the note of the present British plenipotentiary to Mr. Calhoun of the 12th September last, to impair the force of these declarations and admissions of his predecessors. On the contrary, its general tone is in perfect accordance with them.

Whatever may be the consequences, then, whether for good or for evil—whether to strengthen or to destroy the British claim—it is now too late for the British government to vary their position. If the Nootka convention confers upon them no such rights as they claim, they cannot at this late hour go behind its provisions and set up claims which, in 1826, they admitted had been merged "in the text and stipulations of that convention itself."

The undersigned regrets that the British plenipotentiary has not noticed his exposition of the true construction of the Nootka convention. He had endeavored, and he believes successfully, to prove that this treaty was transient in its very nature; that it conferred upon Great Britain no right but that of merely trading with the Indians whilst the country should remain unsettled, and making the necessary establishments for this purpose; and that it did not interfere with the ultimate sovereignty of Spain over the territory. The British plenipotentiary has not attempted to resist these con-

clusions. If they be fair and legitimate, then it would not avail Great Britain, even if she could prove the Nootka convention to be still in force. On the contrary, this convention, if the construction placed upon it by the undersigned be correct, contains a clear virtual admission on the part of Great Britain, that Spain held the eventual right of sovereignty over the whole disputed territory, and, consequently, that it now belongs to the United States.

The value of this admission, made in 1790, is the same, whether or not the convention has continued to exist until the present day. But he is willing to leave this point on the uncontroverted argument contained in his former statement.

But is the Nootka Sound convention still in force? The British plenipotentiary does not contest the clear general principle of public law, "that war terminates all subsisting treaties between the belligerant powers." He contends, however, in the first place, that this convention is partly commercial; and that, so far as it partakes of this character, it was revived by the treaty concluded at Madrid on the 28th August, 1814, which declares "that all the treaties of commerce which subsisted between the two parties (Great Britain and Spain) in 1796, were thereby ratified and confirmed;" and, 2d, "that in other respects it must be considered as an acknowledgment of subsisting rights—an admission of certain principles of international law," not to be revoked by war.

In regard to the first proposition, the undersigned is satisfied to leave the question to rest upon his former argument, as the British plenipotentiary has contented himself with merely asserting the fact, that the commercial portion of the Nootka Sound convention was revived by the treaty of 1814, without even specifying what he considers to be that portion of that convention. If the undersigned had desired to strengthen his former position, he might have repeated with great effect the argument contained in the note of Lord Aberdeen to the Duke of Solomayor, dated 30th June, 1845, in which his lordship clearly established, that all the treaties of commerce subsisting between Great Britain and Spain previous to 1796, were confined to the trade with Spain alone, and did not embrace her colonies and remote possessions.

The second proposition of the British plenipotentiary deserves greater attention. Does the Nootka Sound convention belong to that class of treaties containing "an acknowledgment of subsisting rights—an admission of certain principles of international law" not to be abrogated by war? Had Spain by this convention acknowledged the right of all nations to make discoveries, plant settlements, and establish colonies, on the northwest coast of America, bringing with them their sovereign jurisdiction, there would then have been much force in the argument. But such an admission never was made, and never was intended to be made, by Spain. The Nootka convention is arbitrary and artificial in the highest degree, and is any thing rather than the mere acknowledgment of simple and elementary principles consecrated by the law of nations. In all its provisions it is expressly confined to Great Britain and Spain, and acknowledges no right whatever in any third power to interfere with the northwest coast of America. Neither in its terms, nor in its essence, does it contain any acknowledgment of previously subsisting territorial rights in Great Britain or any other nation. It is strictly confined to future engagements, and these are of a most peculiar character. Even under the construction of its provisions maintained by Great Britain, her claim does not extend to

plant colonies, which she would have had a right to do under the law of nations, had the country been unappropriated; but it is limited to a mere right of joint occupancy, not in respect to any part, but to the whole, the sovereignty remaining in abeyance. And to what kind of occupancy? Not separate and distinct colonies, but scattered settlements, intermingled with each other over the whole surface of the territory, for the single purpose of trading with the Indians, to all of which the subjects of each power should have free access, the right of exclusive dominion remaining suspended. Surely it cannot be successfully contended that such a treaty is "an admission of certain principles of international law," so sacred and so perpetual in their nature as not to be annulled by war. On the contrary, from the character of its provisions, it cannot be supposed for a single moment that it was intended for any purpose but that of a mere temporary arrangement between Great Britain and Spain. The law of nations recognises no such principles in regard to unappropriated territory as those embraced in this treaty; and the British plenipotentiary must fail in the attempt to prove, that it contains "an admission of certain principles of international law" which will survive the shock of war.

But the British plenipotentiary contends, that from the silence of Spain during the negotiations of 1818, between Great Britain and the United States, respecting the Oregon territory, as well as "from her silence with respect to the continued occupation by the British of their settlements in the Columbia territory, subsequently to the convention of 1814," it may fairly "be inferred that Spain considered the stipulations of the Nootka convention, and the principles therein laid down, to be still in force."

The undersigned cannot imagine a case where the obligations of a treaty, once extinguished by war, can be revived, without a positive agreement to this effect between the parties. Even if both parties, after the conclusion of peace, should perform positive and unequivocal acts in accordance with its provisions, these must be construed as merely voluntary, to be discontinued by either at pleasure. But, in the present case, it is not even pretended that Spain performed any act in accordance with the convention of Nootka Sound, after her treaty with Great Britain of 1814. Her mere silence is relied upon to revive that convention.

The undersigned asserts confidently, that neither by public nor private law will the mere silence of one party, whilst another is encroaching upon his rights, even if he had knowledge of this encroachment, deprive him of these rights. If this principle be correct as applied to individuals, it holds with much greater force in regard to nations. The feeble may not be in a condition to complain against the powerful, and thus the encroachment of the strong would convert itself into a perfect title against the weak.

In the present case, it was scarcely possible for Spain even to have learned the pendency of negotiations between the United States and Great Britain, in relation to the northwest coast of America, before she had ceded all her rights on that coast to the former, by the Florida treaty of 22d February, 1819. The convention of joint occupation between the United States and Great Britain, was not signed at London until the 20th October, 1818, but four months previous to the date of the Florida treaty; and the ratifications were not exchanged and the convention published until the 30th of January, 1819.

Besides, the negotiations which terminated in the Florida treaty had been commenced as early as December, 1815, and were in full progress on the 20th October, 1818, when the convention was signed between Great

Britain and the United States. It does not appear, therefore, that Spain had any knowledge of the existence of these negotiations; and even if this were otherwise, she would have had no motive to complain, as she was in the very act of transferring all her rights to the United States.

But, says the British plenipotentiary, Spain looked in silence on the continued occupation, by the British, of the settlements in the Columbia territory subsequently to the convention of 1814, and therefore she considered the Nootka Sound convention to be still in force. The period of this silence, so far as it could affect Spain, commenced on the 28th day of August, 1814—the date of the additional articles to the treaty of Madrid—and terminated on the 22d February, 1819, the date of the Florida treaty. Is there the least reason, from this silence, to infer an admission by Spain of the continued existence of the Nootka Sound convention? In the first place, this convention was entirely confined "to landing on the coasts of those seas, in places not already occupied, for the purpose of carrying on their commerce with the natives of the country, or of making settlements there." It did not extend to the interior. At the date of this convention, no person dreamed that British traders from Canada, or Hudson's Bay, would cross the Rocky mountains and encroach on the rights of Spain from that quarter. Great Britain had never made any settlement on the northwestern coast of America, from the date of the Nootka Sound convention, until the 22d of February, 1819; nor, so far as the undersigned is informed, has she done so down to the present moment. Spain could not therefore have complained of any such settlement. In regard to the encroachments which had been made from the interior by the Northwest Company, neither Spain nor the rest of the world had any specific knowledge of their existence. But even if the British plenipotentiary had brought such knowledge home to her, which he has not attempted, she had been exhausted by one long and bloody war, and was then engaged in another with her colonies, and was besides negotiating for a transfer of all her rights on the northwestern coast of America to the United States. Surely, these were sufficient reasons for her silence, without inferring from it that she acquiesced in the continued existence of the Nootka convention. If Spain had entertained the least idea that the Nootka convention was still in force, her good faith and her national honor would have caused her to communicate this fact to the United States before she had ceded this territory to them for an ample consideration. Not the least intimation of the kind was ever communicated.

Like Great Britain in 1818, Spain in 1819 had no idea that the Nootka Sound convention was in force. It had then passed away, and was forgotten.

The British plenipotentiary alleges, that the reason why Great Britain did not assert the existence of the Nootka convention, during the negotiations between the two governments in 1818, was, that no occasion had arisen for its interposition; the American government not having then acquired the title of Spain. It is very true that the United States had not then acquired the Spanish title; but is it possible to imagine that throughout the whole negotiation the British commissioners, had they supposed this convention to have been in existence, would have remained entirely silent in regard to a treaty which, as Great Britain now alleges, gave her equal and co-ordinate rights with Spain to the whole northwest coast of America? At that period, Great Britain confined her claims to those arising from discovery and purchase from the Indians. How vastly she could have

strengthened these claims, had she then supposed the Nootka convention to be in force, with her present construction of its provisions. Even in 1824 it was first introduced into the negotiation, not by her commissioners, but by Mr. Rush, the American plenipotentiary.

But the British plenipotentiary argues, that "the United States can found no claim on discovery, exploration, and settlement, effected previously to the Florida treaty, without admitting the principles of the Nootka convention;" "nor can they appeal to any exclusive right as acquired by the Florida treaty, without upsetting all claims adduced in their own proper right by reason of discovery, exploration, and settlement, antecedent to that arrangement."

This is a most ingenious method of making two distinct and independent titles, held by the same nation worse than one; of arraying them against each other, and thus destroying the validity of both. Does he forget that the United States own both these titles, and can wield them either separately or conjointly against the claim of Great Britain at their pleasure? From the course of his remarks, it might be supposed that Great Britain, and not the United States, had acquired the Spanish title under the Florida treaty. But Great Britain is a third party; an entire stranger to both these titles; and has no right whatever to marshal the one against the other.

By what authority can Great Britain interpose in this manner? Was it ever imagined, in any court of justice, that the acquisition of a new title destroyed the old one; and, *vice versa*, that the purchase of the old title destroyed the new one? In a question of mere private right, it would be considered absurd if a stranger to both titles should say to the party who had made a settlement—You shall not avail yourself of your possession, because this was taken in violation of another outstanding title; and although I must admit that you have also acquired this outstanding title, yet even this shall avail you nothing; because, having taken possession previously to your purchase, you thereby evinced that you did not regard such title as valid. And yet such is the mode by which the British plenipotentiary has attempted to destroy both the American and Spanish title. On the contrary, in the case mentioned, the possession and the outstanding title being united in the same individual, these conjoined would be as perfect as if both had been vested in him from the beginning.

The undersigned, whilst strongly asserting both these titles, and believing each of them separately to be good, as against Great Britain, has studiously avoided instituting any comparison between them. But, admitting, for the sake of the argument merely, that the discovery by Captain Gray of the mouth of the Columbia, its exploration by Lewis and Clarke, and the settlement upon its banks at Astoria, were encroachments on Spain, she, and she alone, had a right to complain. Great Britain was a third party; and as such had no right to interfere in the question between Spain and the United States. But Spain, instead of complaining of these acts as encroachments, on the 22d February, 1819, by the Florida treaty, transferred her whole title to the United States. From that moment all possible conflict between the two titles was ended, both being united in the same party. Two titles which might have conflicted, therefore, were thus blended together. The title now vested in the United States is just as strong as though every act of discovery, exploration, and settlement, on the part of both powers, had been performed by Spain alone before she had transferred all her rights to the United States. The two powers are one in this respect; the two titles are one; and, as the undersigned will show here-

after, they serve to confirm and strengthen each other. If Great Britain, instead of the United States, had acquired the title of Spain, she might have contended that those acts of the United States were encroachments; but, standing in the attitude of a stranger to both titles, she has no right to interfere in the matter.

The undersigned deems it unnecessary to pursue this branch of the subject further than to state that the United States, before they had acquired the title of Spain, always treated that title with respect. In the negotiation of 1818, the American plenipotentiaries "did not assert that the United States had a perfect right to that country, but insisted that their claim was at least good against Great Britain;" and the convention of October 20, 1818, unlike that of Nootka Sound, "reserved the claims of any other power or State to any part of the said country." This reservation could have been intended for Spain alone. But ever since the United States acquired the Spanish title, they have always asserted and maintained their right in the strongest terms up to the Russian line, even whilst offering, for the sake of harmony and peace, to divide the territory in dispute by the 49th parallel of latitude.

The British plenipotentiary, then, has entirely failed to sustain his position that the United States can found no claim on discovery, exploration, and settlement, without admitting the principles of the Nootka convention. That convention died on the commencement of the war between Spain and England in 1796, and has never since been revived.

The British plenipotentiary next "endeavors to prove that even if the Nootka Sound convention had never existed, the position of Great Britain in regard to her claim, whether to the whole or to any particular portion of the Oregon territory, is at least as good as that of the United States." In order to establish this position, he must show that the British claim is equal in validity to the titles both of Spain and the United States. These can never now be separated. They are one and the same. Different and diverging as they may have been before the Florida treaty, they are now blended together and identified. The separate discoveries, explorations, and settlements of the two powers, previous to that date, must now be considered as if they had all been made by the United States alone. Under this palpable view of the subject, the undersigned was surprised to find that in the comparison and contrast instituted by the British plenipotentiary between the claim of Great Britain and that of the United States, he had entirely omitted to refer to the discoveries, explorations, and settlements made by Spain. The undersigned will endeavor to supply the omission.

But before he proceeds to the main argument on this point, he feels himself constrained to express his surprise that the British plenipotentiary should again have invoked, in support of the British title, the inconsistency between the Spanish and American branches of the title of the United States. The undersigned cannot forbear to congratulate himself upon the fact, that a gentleman of Mr. Pakenham's acknowledged ability has been reduced to the necessity of relying chiefly upon such a support for sustaining the British pretensions. Stated in brief, the argument is this: The American title is not good against Great Britain, because inconsistent with that of Spain; and the Spanish title is not good against Great Britain, because inconsistent with that of the United States. The undersigned had expected something far different from such an argument in a circle. He had anticipated that the British plenipotentiary would have attempted to prove that Spain had no right to the northwestern coast of America; that it was

vacant and unappropriated; and hence, under the law of nations, was open to discovery, exploration, and settlement by all nations. But no such thing. On this vital point of his ease, he rests his argument solely on the declaration made by the undersigned, that the title of the United States to the valley of the Columbia was perfect and complete before the treaties of joint occupation, of October, 1818, and August, 1827, and before the date of the Florida treaty, in 1819. But the British plenipotentiary ought to recollect that this title was asserted to be complete, not against Spain, but against Great Britain; that the argument was conducted, not against a Spanish, but a British plenipotentiary; and that the United States, and not Great Britain, represent the Spanish title. And further, that the statement from which he extracts these declarations was almost exclusively devoted to prove, in the language quoted by the British plenipotentiary himself, that "Spain had a good title, as against Great Britain, to the whole of the Oregon territory." The undersigned has never, as he before observed, instituted any comparison between the American and the Spanish title. Holding both—having a perfect right to rely upon both, whether jointly or separately—he has strongly asserted each of them in their turn, fully persuaded that either the one or the other is good against Great Britain; and that no human ingenuity can make the Spanish title, now vested in the United States, worse than it would have been had it remained in the hands of Spain.

Briefly to illustrate and enforce this title, shall be the remaining task of the undersigned.

And, in the first place, he cannot but commend the frankness and candor of the British plenipotentiary, in departing from the course of his predecessors, and rejecting all discoveries previous to those of Captain Cook, in the year 1778, as foundations of British title. Commencing with discovery at a period so late, the Spanish title, on the score of antiquity, presents a strong contrast to that of Great Britain. The undersigned had stated as a historical and "striking fact, which must have an important bearing against the claim of Great Britain, that this convention, (the Nootka,) which was dictated by her to Spain, contains no provision impairing the ultimate sovereignty which that power had asserted, for nearly three centuries, over the whole western side of North America as far north as the 61st degree of latitude, and which had never been seriously questioned by any European nation. This had been maintained by Spain with the most vigilant jealousy ever since the discovery of the American continent, and had been acquiesced in by all European governments. It had been admitted even beyond the latitude of 54° 40′ north, by Russia, then the only power having claims which could come in collision with Spain; and that, too, under a sovereign peculiarly tenacious of the territorial rights of her empire." These historical facts had not been, as they could not be, controverted by the British plenipotentiary, although they were brought under his particular observation, and were even quoted by him, with approbation, for the purpose of showing the inconsistency of the several titles held by the United States. In the language of Count de Fernan Nuñez, the Spanish ambassador at Paris, to M. de Montmorin, the secretary of the foreign department of France, under date of June 16th, 1790,—"By the treaties, demarkations, takings of possession, and the most decided acts of sovereignty exercised by the Spaniards in those stations, from the reign of Charles II, and authorized by that monarch in 1692, the original vouchers for which shall be brought forward in the course of the negotiation, all the coast to the north of the western America, on the side of the South sea, as far as be-

yond what is called Prince William's Sound, which is in the 61st degree, is acknowledged to belong exclusively to Spain."

Compared with this ancient claim of Spain, acquiesced in by all European nations for centuries, the claim of Great Britain, founded on discoveries commenced at so late a period as the year 1778, must make an unfavorable first impression.

Spain considered the northwestern coast of America as exclusively her own. She did not send out expeditions to explore that coast for the purpose of rendering her title more valid. When it suited her own convenience, or promoted her own interest, she fitted out such expeditions of discovery to ascertain the character and extent of her own territory. And yet her discoveries along that coast are far earlier than those of the British.

That Juan de Fuca, a Greek in the service of Spain, in 1592, discovered and sailed through the strait now bearing his name, from its southern to its northern extremity, and thence returned through the same passage, no longer admits of reasonable doubt. An account of this voyage was published in London in 1625, in a work called the Pilgrims, by Samuel Purchas. This account was received from the lips of Fuca himself, at Venice, in April, 1596, by Michael Lock, a highly respectable English merchant.

During a long period this voyage was deemed fabulous, because subsequent navigators had in vain attempted to find these straits. Finally, after they had been found, it was discovered that the descriptions of de Fuca corresponded so accurately with their geography, and the facts presented by nature upon the ground, that it was no longer possible to consider his narrative as fabulous. It is true that the opening of the straits from the south lies between the 48th and 49th parallels of latitude, and not between the 47th and the 48th parallels, as he had supposed; but this mistake may be easily explained by the inaccuracy so common throughout the sixteenth century in ascertaining the latitude of places in newly discovered countries.

It is also true that de Fuca, after passing through these straits, supposed he had reached the Atlantic, and had discovered the passage so long and so anxiously sought after between the two oceans; but from the total ignorance and misapprehension, which prevailed at that early day, of the geography of this portion of North America, it was natural for him to believe that he had made this important discovery.

Justice has at length been done to his memory, and these straits which he discovered will in all future time bear his name. Thus the merit of the discovery of the straits of Fuca belongs to Spain, and this nearly two centuries before they had been entered by Captain Berkeley, under the Austrian flag.

It is unnecessary to detail the discoveries of the Spaniards, as they regularly advanced to the north from their settlements on the western coasts of North America, until we reach the voyage of Captain Juan Perez in 1774. That navigator was commissioned by the Viceroy of Mexico to proceed in the corvette Santiago to the 60th degree of north latitude, and from that point to examine the coast down to Mexico. He sailed from San Blas on the 25th January, 1774. In the performance of this commission he landed first on the northwest coast of Queen Charlotte's island, near the 54th degree of north latitude, and thence proceeded south along the shore of that island, and of the great island of Quadra and Vancouver, and then along the coast of the continent, until he reached Monterey. He went on shore and held intercourse with the natives at several places, and especially at the entrance of a bay in latitude 49½ degrees, which he called Port San Lorenzo,

the same now known by the name of Nootka Sound. In addition to the journals of this voyage, which render the fact incontestable, we have the high authority of Baron Humboldt in its favor. That distinguished traveller, who had access to the manuscript documents in the city of Mexico, states that "Perez and his pilot, Estevan Martinez, left the port of San Blas on the 24th January, 1774. On the 9th August they anchored, the first of all European navigators, in Nootka Road, which they called the port of San Lorenzo, and which the illustrious Cook, *four years afterwards*, called King George's Sound."

In the next year, 1775, the Viceroy of Mexico again fitted out the Santiago, under the command of Bruno Heceta, with Perez, her former commander, as ensign; and also a schooner called the Sonora, commanded by Juan Francisco de la Bodega y Quadra. These vessels were commissioned to examine the northwestern coast of America as far as the 65th degree of latitude, and sailed in company from San Blas on the 15th March, 1775.

It is unnecessary to enumerate the different places on the coast examined by these navigators, either in company or separately. Suffice it to say, that they landed at many places on the coast from the 41st to the 57th degree of latitude, on all of which occasions they took possession of the country in the name of their sovereign, according to a prescribed regulation; celebrating mass, reading declarations asserting the right of Spain to the territory, and erecting crosses with inscriptions to commemorate the event. Some of these crosses were afterwards found standing by British navigators. In relation to these voyages, Baron Humboldt says: "In the following year, (1775, after that of Perez.) a second expedition set out from San Blas under the command of Heceta, Ayala, and Quadra. Heceta discovered the mouth of the Rio Columbia, called it the entrada de Heceta, the Pic of San Jacinto (Mount Edgecombe,) near Norfolk bay, and the fine port of Bucareli. I possess two very curious small maps, engraved in 1788, in the city of Mexico, which give the bearings of the coast from the 27th to the 58th degree of latitude, as they were discovered in the expedition of Quadra."

In the face of these incontestable facts, the British plenipotentiary says, that "Captain Cook must also be considered the discoverer of Nootka Sound, in consequence of the want of authenticity in the alleged previous discovery of that port by Perez." And yet Cook did not even sail from England until the 12th July, 1776, nearly two years after Perez had made this discovery. The chief object of Cook's voyage was the discovery of a northwest passage; and he never landed at any point of the continent south of Nootka Sound. It is true, that in coasting along the continent, before he reached this place, he had observed Cape Flattery; but he was entirely ignorant that this was the southern entrance of the straits of Fuca. In his journal he admits that he had heard some account of the Spanish voyages of 1774 and 1775, before he left England; and it is beyond question that, before his departure, accounts of the voyage of Quadra had been published both in Madrid and London. From Nootka Sound, Cook did not again see land until he reached the 57th degree of north latitude.

In 1787, it is alleged by the British plenipotentiary that Captain Berkeley, a British subject, discovered the straits of Fuca; but these straits had been discovered by Juan de Fuca nearly two centuries before. Besides, if there had been any merit in this discovery of Captain Berkeley, it would have belonged to Austria, in whose service he was, and under whose colors he sailed, and cannot be appropriated by Great Britain.

And here it is worthy of remark, that these discoveries of Cook and

Berkeley, in 1778 and 1787, are all those on which the British plenipotentiary relies, previous to the date of the Nootka Sound convention, in October, 1790, to defeat the ancient Spanish title to the northwest coast of America.

The undersigned will now take a position which cannot, in his opinion, be successfully assailed; and this is, that no discovery, exploration, or settlement made by Great Britain on the northwest coast of America, after the date of the Nootka Sound convention, and before it was terminated by the war of 1796, can be invoked by that power in favor of her own title, or against the title of Spain. Even according to the British construction of that convention, the sovereignty over the territory was to remain in abeyance during its continuance, as well in regard to Great Britain as to Spain. It would, therefore, have been an open violation of faith on the part of Great Britain, after having secured the privileges conferred upon her by the convention, to turn round against her partner and perform any acts calculated to divest Spain of her ultimate sovereignty over any portion of the country. The palpable meaning of the convention was, that during its continuance the rights of the respective parties, whatever they may have been, should remain just as they had existed at its commencement.

The government of Great Britain is not justly chargeable with any such breach of faith. Captain Vancouver acted without instructions in attempting to take possession of the whole northwestern coast of America in the name of his sovereign. This officer, sent out from England to execute the convention, did not carry with him any authority to violate it in this outrageous manner.

Without this treaty, he would have been a mere intruder: under it, Great Britain had a right to make discoveries and surveys; not thereby to acquire title, but merely to enable her subjects to select spots the most advantageous, to use the language of the convention, "for the purpose of carrying on their commerce with the natives of the country, or of making settlements there."

If this construction of the Nootka Sound convention be correct—and the undersigned does not perceive how it can be questioned—then Vancouver's passage through the straits of Fuca, in 1792, and Alexander Mackenzie's journey across the continent, in 1793, can never be transformed into elements of title in favor of Great Britain.

But even if the undersigned could be mistaken in these positions, it would be easy to prove that Captain John Kendrick, in the American sloop Washington, passed through the straits of Fuca, in 1789, three years before Captain Vancouver performed the same voyage. The very instructions to the latter, before he left England, in January, 1791, refer to this fact, which had been communicated to the British government by Lieutenant Meares, who has rendered his name so notorious by its connexion with the transactions preceding the Nootka Sound convention. It is, moreover, well known that the whole southern division of the straits had been explored by the Spanish navigators, Elisa and Quimpa—the first in 1790, and the latter in 1791.

After what has been said, it will be perceived how little reason the British plenipotentiary has for stating that his government has, "as far as relates to Vancouver's island, as complete a case of discovery, exploration, and settlement, as can well be presented, giving to Great Britain, in any arrangement that may be made with regard to the territory in dispute, the strongest possible claim to the exclusive possession of the [illegible]."

The discovery thus relied upon is that of Nootka Sound, by Cook, in 1778; when it has been demonstrated that this port was first discovered by Perez, in 1774. The exploration is that by Vancouver, in passing through the straits of Fuca, in 1792, and examining the coasts of the territory in dispute; when de Fuca himself had passed through these straits in 1592, and Kendrick again in 1789, and a complete examination of the western coast had been made in 1774 and 1775, both by Perez and Quadra. As to possession, if Meares was ever actually restored to his possessions at Nootka Sound, whatever these may have been, the undersigned has never seen any evidence of the fact. It is not to be found in the journal of Vancouver, although this officer was sent from England for the avowed purpose of witnessing such a restoration. The undersigned knows not whether any new understanding took place between the British and Spanish governments on this subject; but one fact is placed beyond all doubt—that the Spaniards continued in the undisturbed possession of Nootka Sound until the year 1795, when they voluntarily abandoned the place. Great Britain has never, at any time since, occupied this or any other position on Vancouver's island. Thus, on the score of either discovery, exploration, or possession, this island seems to be the very last portion of the territory in dispute to which she can assert a just claim.

In the mean time, the United States were proceeding with the discoveries which served to complete and confirm the Spanish-American title to the whole of the disputed territory.

Captain Robert Gray, in June, 1789, in the sloop Washington, first explored the whole eastern coast of Queen Charlotte's island.

In the autumn of the same year, Captain John Kendrick, having in the mean time surrendered the command of the Columbia to Captain Gray, sailed, as has been already stated, in the sloop Washington, entirely through the straits of Fuca.

In 1791 Captain Gray returned to the north Pacific in the Columbia, and in the summer of that year examined many of the inlets and passages between the 54th and 56th degrees of latitude, which the undersigned considers it unnecessary to specify.

On the 7th of May, 1792, he discovered and entered Bulfinch's harbor, where he remained at anchor three days, trading with the Indians.

On the 11th May, 1792, Captain Gray entered the mouth of the Columbia, and completed the discovery of that great river. This river had been long sought in vain by former navigators. Both Meares and Vancouver, after examination, had denied its existence. Thus is the world indebted to the enterprise, perseverance, and intelligence of an American captain of a trading vessel, for their first knowledge of this, the greatest river on the western coast of America—a river whose head springs flow from the gorges of the Rocky mountains, and whose branches extend from the 42d to the 53d parallel of latitude. This was the last and most important discovery on the coast, and has pepetuated the name of Robert Gray. In all future time this great river will bear the name of his vessel.

It is true that Bruno Heceta, in the year 1775, had been opposite the bay of the Columbia, and the currents and eddies of the water caused him, as he remarks, to believe that this was "the mouth of some great river, or of some passage to another sea;" and his opinion seems decidedly to have been that this was the opening of the strait discovered by Juan de Fuca, in 1592. To use his own language: "Notwithstanding the great difference between the position of this bay and the passage mentioned by de Fuca, I have lit-

tle difficulty in conceiving that they may be the same, having observed equal or greater differences in the latitudes of other capes and ports on this coast, as I shall show at its proper time; and in all cases the latitudes thus assigned are higher than the real ones."

Heceta, from his own declaration, had never entered the Columbia, and he was in doubt whether the opening was the mouth of a river or an arm of the sea; and subsequent examinations of the coast by other navigators had rendered the opinion universal, that no such river existed when Gray first bore the American flag across its bar, sailed up its channel for twenty-five miles, and remained in the river nine days, trading with the Indians.

The British plenipotentiary attempts to depreciate the value to the United States of Gray's discovery, because his ship, the Columbia, was a trading and not a national vessel. As he furnishes no reason for this distinction, the undersigned will confine himself to the remark, that a merchant vessel bears the flag of her country at her mast-head, and continues under its jurisdiction and protection in the same manner as though she had been commissioned for the express purpose of making discoveries. Besides, beyond all doubt, this discovery was made by Gray; and to what nation could the benefit of it belong, unless it be to the United States? Certainly not to Great Britain; and if to Spain, the United States are now her representative.

Nor does the undersigned perceive in what manner the value of this great discovery can be lessened by the fact that it was first published to the world through the journal of Captain Vancouver, a British authority. On the contrary, its authenticity, being thus acknowledged by the party having an adverse interest, is more firmly established than if it had been first published in the United States.

From a careful examination and review of the subject, the undersigned ventures the assertion that to Spain and the United States belongs all the merit of the discovery of the northwest coast of America south of the Russian line, not a spot on which, unless it may have been the shores of some of the interior bays and inlets after the entrance to them had been known, was ever beheld by British subjects until after it had been seen or touched by a Spaniard or an American. Spain proceeded in this work of discovery, not as a means of acquiring title, but for the purpose of examining and surveying territory to which she believed she had an incontestible right. Her title had been sanctioned for centuries by the acknowledgment or acquiescence of all the European powers. The United States alone could have disputed this title, and that only to the extent of the region watered by the Columbia. The Spanish and American titles, now united by the Florida treaty, cannot be justly resisted by Great Britain. Considered together, they constituted a perfect title to the whole territory in dispute ever since the 11th of May, 1792, when Captain Gray passed the bar at the mouth of the Columbia, which he had observed in August, 1788.

The undersigned will now proceed to show that this title of the United States, at least to the possession of the territory at the mouth of the Columbia, has been acknowledged by the most solemn and unequivocal acts of the British government.

After the purchase of Louisiana from France, the government of the United States fitted out an expedition under Messrs. Lewis and Clarke, who, in 1805, first explored the Columbia from its sources to its mouth, preparatory to the occupation of the territory by the United States.

In 1811, the settlement at Astoria was made by the Americans near the

mouth of the river, and several other posts were established in the interior along its banks. The war of 1812 between Great Britain and the United States thus found the latter in peaceable possession of that region. Astoria was captured by Great Britain during this war. The treaty of peace concluded at Ghent, in December, 1814, provided that "all territory, places, and possessions, whatsoever, taken by either party from the other during the war," &c. &c. "shall be restored without delay." In obedience to the provisions of this treaty, Great Britain restored Astoria to the United States, and thus admitted in the most solemn manner, not only that it had been an American territory, or possession, at the commencement of the war, but that it had been captured by British arms during its continuance. It is now too late to gainsay or explain away these facts. Both the treaty of Ghent, and the acts of the British government under it, disprove the allegations of the British plenipotentiary, that Astoria passed "into British hands by the voluntary act of the persons in charge of it," and "that it was restored to the United States in 1818, with certain well authenticated reservations."

In reply to the first of these allegations, it is true that the agents of the (American) Pacific Fur Company, before the capture of Astoria on the 16th of October, 1813, had transferred all that they could transfer, the private property of the company, to the (British) Northwest Company; but it will scarcely be contended that such an arrangement could impair the sovereign rights of the United States to the territory. Accordingly, the American flag was still kept flying over the fort until the 1st December, 1813, when it was captured by his majesty's sloop-of-war Racoon, and the British flag was then subsituted.

That it was not restored to the United States "with certain well authenticated reservations," fully appears from the act of restoration itself, bearing date 6th October, 1818. This is as absolute and unconditional as the English language can make it. That this was according to the intention of Lord Castlereagh, clearly appears from his previous admission to Mr. Rush, of the right of the Americans to be reinstated, and to be the party in possession while treating on the title. If British ministers afterwards, in despatches to their own agents, the contents of which were not communicated to the government of the United States, thought proper to protest against our title, these were in effect but mere mental reservations, which could not affect the validity of their own solemn and unconditional act of restoration.

But the British plenipotentiary, notwithstanding the American discovery of the Columbia by Captain Gray, and the exploration by Lewis and Clarke of several of its branches, from their sources in the Rocky mountains, as well as its main channel, to the ocean, contends that because Thompson, a British subject in the employment of the Northwest Company, was the first who navigated the northern branch of that river, the British government thereby acquired certain rights against the United States, the extent of which he does not undertake to specify. In other words, that after one nation had discovered and explored a great river and several of its tributaries, and made settlements on its banks, another nation, if it could find a single branch on its head waters which had not been actually explored, might appropriate to itself this branch, together with the adjacent territory. If this could have been done, it would have produced perpetual strife and collision among the nations after the discovery of America. It would have violated the wise principle, consecrated by the practice of nations, which gives the

valley drained by a river and its branches to the nation which had first discovered and appropriated its mouth.

But, for another reason, this alleged discovery of Thompson has no merits whatever. His journey was undertaken on behalf of the Northwest Company for the mere purpose of anticipating the United States in the occupation of the mouth of the Columbia—a territory to which no nation, unless it may have been Spain, could, with any show of justice, dispute their right. They had acquired it by discovery and by exploration, and were now in the act of taking possession. It was in an enterprise undertaken for such a purpose that Thompson, in hastening from Canada to the mouth of the Columbia, descended the north, arbitrarily assumed by Great Britain to be the main, branch of this river. The period was far too late to impair the title of either Spain or the United States by any such proceeding.

Mr. Thompson, on his return, was accompanied by a party from Astoria, under Mr. David Stuart, who established a post at the confluence of the Okinagan with the north branch of the Columbia, about six hundred miles above the mouth of the latter.

In the next year, 1812, a second trading post was established by a party from Astoria, on the Spokan, about six hundred and fifty miles from the ocean.

It thus appears that previous to the capture of Astoria by the British, the Americans had extended their possessions up the Columbia six hundred and fifty miles. The mere intrusion of the Northwest Company into this territory, and the establishment of two or three trading posts, in 1811 and 1812, on the head waters of the river, can surely not interfere with or impair the Spanish-American title. What this company may have done in the intermediate period until the 20th October, 1818, the date of the first treaty of joint occupation, is unknown to the undersigned, from the impenetrable mystery in which they have veiled their proceedings. After the date of this treaty, neither Great Britain nor the United States could have performed any act affecting their claims to the disputed territory.

To sum up the whole, then, Great Britain cannot rest her claims to the northwest coast of America upon discovery. As little will her single claim by settlement at Nootka Sound avail her. Even Belsham, her own historian, forty years ago, declared it to be certain, from the most authentic information, "that the Spanish flag flying at Nootka was never struck, and that the territory has been virtually relinquished by Great Britain."

The agents of the Northwest Company, penetrating the continent from Canada in 1806, established their first trading post west of the Rocky mountains, at Frazer's lake, in the 54th degree of latitude; and this, with the trading posts established by Thompson, to which the undersigned has just adverted, and possibly some others afterwards, previous to October, 1818, constitutes the claim of Great Britain by actual settlement.

Upon the whole: From the most careful and ample examination which the undersigned has been able to bestow upon the subject, he is satisfied that the Spanish American title now held by the United States, embracing the whole territory between the parallels of 42° and 54° 40', is the best title in existence to this entire region; and that the claim of Great Britain to any portion of it has no sufficient foundation. Even British geographers have not doubted our title to the territory in dispute. There is a large and splendid globe now in the Department of State, recently received from London, and published by Malby and Company, "manufacturers and publishers to the Society for the Diffusion of Useful Knowledge," which assigns this territory to the United States.

Notwithstanding such was and still is the opinion of the President, yet, in the spirit of compromise and concession, and in deference to the action of his predecessors, the undersigned, in obedience to his instructions, proposed to the British plenipotentiary to settle the controversy by dividing the territory in dispute by the forty-ninth parallel of latitude, offering at the same time to make free to Great Britain any port or ports on Vancouver's island, south of this latitude, which the British government might desire. The British plenipotentiary has correctly suggested that the free navigation of the Columbia river was not embraced in this proposal to Great Britain; but, on the other hand, the use of free ports on the southern extremity of this island had not been included in former offers.

Such a proposition as that which has been made never would have been authorized by the President, had this been a new question.

Upon his accession to office, he found the present negotiation pending. It had been instituted in the spirit and upon the principle of compromise. Its object, as avowed by the negotiators, was not to demand the whole territory in dispute for either country; but, in the language of the first protocol, "to treat of the respective claims of the two countries to the Oregon territory, with the view to establish a permanent boundary between them westward of the Rocky mountains to the Pacific ocean."

Placed in this position, and considering that Presidents Monroe and Adams had, on former occasions, offered to divide the territory in dispute by the forty ninth parallel of latitude, he felt it to be his duty not abruptly to arrest the negotiation, but so far to yield his own opinion as once more to make a similar offer.

Not only respect for the conduct of his predecessors, but a sincere and anxious desire to promote peace and harmony between the two countries, influenced him to pursue this course. The Oregon question presents the only intervening cloud which intercepts the prospect of a long career of mutual friendship and beneficial commerce between the two nations; and this cloud he desired to remove.

These are the reasons which actuated the President to offer a proposition so liberal to Great Britain.

And how has this proposition been received by the British plenipotentiary? It has been rejected without even a reference to his own government. Nay, more; the British plenipotentiary, to use his own language, "trusts that the American plenipotentiary will be prepared to offer some further proposal for the settlement of the Oregon question, *more consistent with fairness and equity, and with the reasonable expectations of the British government.*"

Under such circumstances, the undersigned is instructed by the President to say that he owes it to his own country, and a just appreciation of her title to the Oregon territory, to withdraw the proposition to the British government which had been made under his direction; and it is hereby accordingly withdrawn.

In taking this necessary step, the President still cherishes the hope that this long pending controversy may yet be finally adjusted in such a manner as not to disturb the peace or interrupt the harmony now so happily subsisting between the two nations.

The undersigned avails himself, &c.

JAMES BUCHANAN.

Right Hon. RICHARD PAKENHAM, *&c., &c., &c.*